DOCKET

SUPREME COURT
OF THE UNITED STATES

No. 12-5196
Title: Stephen Law, Petitioner
v.
Alfred H. Siegel, Chapter 7 Trustee
Docketed: July 12, 2012
Lower Ct: United States Court of Appeals for the Ninth Circuit
Case Nos.: (09-60046)
Decision Date: June 6, 2011
Rehearing Denied: April 18, 2012
Questions Presented

~~Date~~~	~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~
Jul 5 2012	Petition for a writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due August 13, 2012)
Aug 23 2012	DISTRIBUTED for Conference of September 24, 2012.
Sep 17 2012	Response Requested . (Due October 17, 2012)
Oct 17 2012	Response to petition from respondent Alfred H. Siegel, Chapter 7 Trustee filed.
Oct 30 2012	DISTRIBUTED for Conference of November 20, 2012.
Nov 26 2012	DISTRIBUTED for Conference of November 30, 2012.
Nov 29 2012	Reply of petitioner Stephen Law filed. (Distributed)
Dec 3 2012	The Solicitor General is invited to file a brief in this case expressing the views of the United States.
May 14 2013	Brief amicus curiae of United States filed.
May 28 2013	Supplemental brief of petitioner Stephen Law filed.
May 29 2013	DISTRIBUTED for Conference of June 13, 2013.
Jun 17 2013	Motion to proceed in forma pauperis and petition for a writ of certiorari GRANTED.
Jul 3 2013	The time to file the joint appendix and petitioner's brief on the merits is extended to and including August 27, 2013.
Jul 3 2013	The time to file respondent's brief on the merits is extended to and including October 22, 2013.
Aug 27 2013	Joint appendix filed (1 volume and supplemental volume.)
Aug 27 2013	Brief of petitioner Stephen Law filed.
Sep 3 2013	Brief amici curiae of Bankruptcy Law Scholars filed.
Sep 3 2013	Brief amicus curiae of G. Eric Brunstad, Jr. filed.
Sep 3 2013	Brief amicus curiae of National Association of Consumer Bankruptcy Attorneys

	filed.
Oct 22 2013	Brief of respondent Alfred H. Siegel, Chapter 7 Trustee filed.
Oct 29 2013	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
Oct 29 2013	Brief amicus curiae of United States filed.
Oct 29 2013	Brief amicus curiae of National Association of Bankruptcy Trustees filed.
Oct 29 2013	Brief amicus curiae of National Association of Chapter Thirteen Trustees filed.
Nov 4 2013	SET FOR ARGUMENT ON Monday, January 13, 2014.
Nov 5 2013	CIRCULATED
Nov 18 2013	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
Nov 21 2013	Reply of petitioner Stephen Law filed. (Distributed)
Nov 25 2013	Record received from U.S. Bankruptcy Appellate Panel of the Ninth Circuit. (1Box)
Jan 13 2014	Argued. For petitioner: Matthew S. Hellman, Washington, D. C. For respondent: Neal Katyal, Washington, D. C.; and Sarah E. Harrington, Assistant to the Solicitor General, Department of Justice, Washington, D. C. (for United States, as amicus curiae.)
Mar 4 2014	Judgment REVERSED and case REMANDED. Scalia, J., delivered the opinion for a unanimous Court.
Apr 7 2014	JUDGMENT ISSUED.
Apr 8 2014	Record from U.S. Bankruptcy Appellate Panel 9th Circuit, has been returned.

PETITION FOR WRIT OF CERTIORARI

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Stephen Law - Petitioner

Vs.

United States Court of Appeals for the Ninth Circuit – Respondent

On Petition for a Writ of Certiorari to

The United States Court of Appeal for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Stephen Law
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Petitioner Pro se

Questions Presented for Review:

1. Does the 9th Circuit Court of Appeals' memorandum directly conflict with an opinion by other Circuit Court of Appeals and the Supreme Court?
2. Does the Bankruptcy Court would allow the surcharge to extent to debtor's constitutionally protected homestead property?

List of Parties

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Alfred H. Siegel- Chapter 7 trustee,
2. Lili Lin of China
3. Peter C. Chow, Esq. Chow & Hamilton – Counsel for Lili Lin of China,
4. Andrew Smyth, Esq. former Counsel for Lili Lin of China
5. Unites States Bankruptcy Court, Central District of California,
6. U. S. Bankruptcy Appellate Penal of the Ninth Circuit,

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below:

OPINIONS BELOW

[X] For cases from **federal court:**

The opinion of the United States court of appeals for the ninth circuit at Appendix A to the petition is unpublished.

The opinion of the United States Bankruptcy Appellate Panel of the Ninth Circuit at Appendix B to the petition is unpublished.

JURISDICTION

The date on which the United States Court of Appeals for the Ninth Circuit decided my case was June 6, 2011. A timely filed petition for rehearing was denied by the Court of Appeals on April 18, 2012, and a copy of the order denying rehearing appears at Appendix C. Petitioner files present Petition for Writs of Certiorari within 90 days after the 9th Circuit denying the petition for rehearing pursuant to the rules 13.1, and under 28 U.S.C. section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The issues of the petition involved the Constitutional provision such as 11 U.S.C. section 341; 541; Fed.Rule Bankr.P. 2003(a); 4003; 522(d) and (l), a typical case of *Taylor v. Freeland & Kronz*, 503 U.S. 638(1992), as well as the case of *In re Mazon* 368 B.R. 906 (Bankr. M.D. Fla.2007) and *In re Chauncey* 454 F. 3d 1292(11 Cir.2006).

REASON FOR GRANTING THE WRIT

For protect our country's Constitution and lawful civil Codes, bankruptcy Codes which protect Debtor's constitutionally homestead property which IS compelling reasons exist for the exercise of the Supreme Court's discretionary jurisdiction. More important, the 9th Circuit court of appeals and its BAP and the Bankruptcy Court's decisions are in totally conflict with the decisions of other Circuit Court of Appeals and the Supreme Court, the importance of the present case not only to the petitioner but also to others similarly situated; and the ways the decision of the lower courts in petitioner's case was erroneous. There are also a question of debtor's real property's equity of $316,652.00 should belong to debtor who paid for all the payments until trustee sold the house or bankruptcy Estate. Up to this date, this issue has not been resolved.

I.

STATEMENT OF THE CASE

On or about September 1988, Petitioner/Debtor, Stephen Law aka Zhanjun Luo, ("Petitioner" or "Debtor") bought a residential property commonly known as 16150 La Monde Street, Hacienda Heights, California. (The "Property")

On or about August 1989, Petitioner filed a Homestead Exemption in the county.

On or about March 1998, debtor could not get any loan from any Bank in the States because of his first bankruptcy filing of 1995 and because his credit report rating. There was only one way to get the personal loan from outside of the States. Therefore, petitioner decided to get the personal loan of $168,000 from Lili Lin of China ("Lin of China", petitioner's old friend) and recorded the Deed of Trust in the Los Angeles County in behalf of Lin of China who did not have any personal knowledge regarding any of

lawsuits of petitioner, but wired the funds to petitioner's California Federal Bank accounts. Petitioner made regular payments to Lin of China.

On January 5, 2004, petitioner filed the chapter 7 bankruptcy petition in the bankruptcy court as case LA04-10052TD. Debtor listed the home property as value of **$363,348.00**. Trustee Alfred Siegel ("Trustee") failed to file any of objections to debtor's homestead exemption.

On or about January 5, 2006, trustee filed a motion to surcharge debtor's homestead exemption without proper served debtor.

On February 1, 2006, the court ordered trustee to reserving the surcharge motion to debtor at less 24 days before the hearing which continued to March 22, 2006.

On February 28, 2006, the trustee sent and faxed a letter to debtor and Lin of China offering settlement of $100,000 for both debtor's homestead exemption and Lin of China's mortgage loan lien which is about $280,000 according trustee's escrow closing statement. Debtor and Lin of China rejected the offer because of the exemption and Lin's Lien is totally over $355,000 which far exceed trustee's offer, but made very good faith and reasonable counteroffer of $265,000 but it was declined by the trustee.

On or about March 9, 2006, after debtor moved out his house which he has paid for more than two years' house payments since the bankruptcy, trustee entered into an agreement with his Lili Lin of California, ("Lin of Artesia" a judgment debtor of petitioner) caused debtor's property wrongful be sold for $680,000, petitioner's property equity was **$316,652.00** and the remaining in the bankruptcy Estate account was about **$500,000.00** after pay off all the costs.

On May 15, 2006, debtor filed a Notice of Appeal re the bankruptcy court's order granting trustee's first surcharge motion to debtor's homestead exemption.

On December 29, 2006, the Bankruptcy Appellate Panel ("BAP) issued a Memorandum on debtor's appeal, case CC-06-1180 and stated as follow:

> *For purposes of this appeal and for the sake of completeness, we assume, without deciding, that Lili Lin of China has standing to appeal because of the risk that the* ***trustee will attempt to dissipate the sale proceeds without having first obtained a judicial determination establishing Lili Lin of China's lien status in those proceeds.*** *It is plain that Lili Lin of China remains entitled to assert her claim to the 1999 Note and DOT.*
>
> *Similarly, it is apparent that* ***the court was merely shifting litigation expenses to the debtor in fashion designed to punish the debtor for his litigation activity.*** *The court explained that the debtor's conduct "has been the direct cause of the expenses that have been incurred by the trustee" and that "additional expenses are going to be incurred by the estate in defending [the debtor's] appeals."* ***While we do not quarrel with those observations they do not warrant denial of a homestead exemption that was claimed from the outset of the case.***
>
> *In context, we have the* ***definite*** *and* ***firm conviction*** *that the $75,000 surcharge of a $75,000 exemption in this instance is not warranted by Latman or by Arnold. Accordingly, the order surcharging the debtor's $75,000 homestead exemption by $75,000 will be reversed. The order surcharging the debtor's $75,000 homestead exemption by $75,000 is REVERSED.* (Memo of BAP case CC-06-1180)

On December 30, 2006, by good faith effort, Debtor emailed and faxed a letter to Trustee's attorney and requested the Trustee to pay $75,000 without intervention of the court. Trustee failed to respond and refused to do so.

On February 7, 2007, since trustee has refused to pay, debtor has no alternative, but forced to file his **first motion** for an order to pay debtor's homestead exemption.

On February 28, 2007, the court denied debtor's first homestead payment motion based on the ground that the court lack jurisdiction because trustee had filed an appeal to the court of appeals for the 9th Circuit.

On March 6, 2007, debtor filed a Notice of Appeal, re the court denying debtor's **first motion** for payment of homestead exemption.

On October 5, 2007, in the case CC-07-1127, the BAP issued a Memorandum, **again** reversed and remand the court's order denying Debtor's first motion for directing the trustee to pay debtor's claimed homestead exemption of $75,000 and stated that:

> *The debtor appealed the Surcharge Order to the Bankruptcy Appellate Panel (BAP No. CC-06-1180-KMoB). The Panel reversed the Surcharge Order on the ground that there were no extraordinary circumstances present justifying the surcharge of the debtor's entire homestead exemption. Although the debtor's conduct toward the bankruptcy court and the trustee had been both resistant and antagonistic, his* ***proven*** *conduct* ***did not equate with bad faith****. Consequently, an equitable* ***surcharge of his homestead exemption was not appropriate under current Ninth Circuit case law.***
>
> ***An unopposed homestead exemption claim is analogous to a judgment****. In the absence of an order granting an extension of time, once the period to object to a claimed exemption expires, a party-in-interest is time-barred from challenging the validity of the exemption claim,* ***and the property claimed as exempt is exempt.****12 Smith v. Kennedy (In re Smith), 235 F.3d 472, 475 (9th Cir. 2000).*
>
> *"[D]eadlines may lead to unwelcome results, but they prompt parties to act and they produce finality." Smith,235 F.3d at 476 (quoting Taylor v. Freeland & Kronz, 503 U.S.638, 644 (1992)) (emphasis added). Similar to an unstayed judgment,* ***an unopposed homestead exemption claim stands final.***
>
> *Here, the trustee did not challenge the validity of the debtor's claimed homestead exemption within the prescribed period. Thus, the debtor's right to his homestead exemption became final; the* ***$75,000 of value in his residence that the debtor claimed as exempt is exempt****. Taylor, 503 U.S. at 643-44.*
>
> *Because the debtor's claimed homestead exemption is final, the bankruptcy court had the authority to act on the Homestead Payment Motion, notwithstanding the appeal of the Surcharge Order.*
>
> *The bankruptcy court* ***could and should have*** *made a determination and issued an order with respect to the Homestead Payment Motion –* ***but it declined to do so****. Therefore, we remand the Homestead Payment Motion to the bankruptcy court for further proceedings.* (BAP. CC-07-1127 Memo)

To comply with BAP's order, Appellant filed a **second motion** for an Order to pay Debtor's Claimed Homestead Exemption in the court on October 11, 2007.

On November 7. 2007. the court repeat denied Debtor's **second Motion** for payment of Homestead refused to comply with the orders of BAP of CC-06-1180 and CC-07-1127 which directing the court to issue an appropriate order notwithstanding the appeal of the surcharge order pending before the Ninth Circuit.

On November 19, 2008, the court entered an order denying Debtor's **second motion** for payment of homestead. Debtor appealed the order to BAP case CC-08-1002.

On January 30, 2008, the continued Status Conference and the Court's Order to show Cause in the adv. 07-1102 (Trustee's Declaratory Relief Action) which against Lin of China came on for hearing before the Honorable Thomas B. Donovan in the Bankruptcy Court. Peter C. Chow appeared on behalf of Lin of China. Steven Gubner appeared for Trustee, Debtor appeared in pro per. Peter Chow stated to the Court that he had met Lili Lin in Hong Kong on December 2007 and Lin of China showed him her Chinese government Identification, and she gave him a copies of identification, and he was retained by Lin of China and filed a Substitution of Attorney in the Court, Lin of China applied a Immigration visa to the USCIS (U.S. Citizenship and Immigration Services of U.S. Department of Homeland Security) by the USCIS rules, she could not get a visitor visa to the United States, but he has the original Deed of Trust and the Note. The Court asked Peter Chow handed him the original Deed of Trust and the Note and examined the original Deed of Trust and Note for few minutes then ordered the Status Conference and OSC continue to April 3, 2008.

On or about March 3, 2008, Peter Chow as attorney of record of Lin of China filed a Response to the Court's OSC and provided additional 9 exhibits to prove Lin of China did loan $168, 000 to the debtor.

On March 27, 2008 and April 10, 2008, Lin of Artesia filed a New Declaration in the bankruptcy Court and admitted that her birthday is February 8, 1963. (Lin of China's birthday is November 22, 1947) She has resided in City of Artesia, California since December 2003. (Lin of China has resided in China) She did not loan debtor Stephen Law (aka Zhanjun Luo) the sum of $168,000 as set forth in the Note and DOT, nor have she ever loaned him any money. She has never seen the original DOT or Note, and she never has possession of the original DOT and the Note. Further, Lin of Artesia admitted that although Lili Lin was listed on the Note and Deed of Trust as the beneficiary and the trustee, but she does not believe that debtor, Stephen Law gave her any of the interest on the said Deed of Trust and the Note, therefore, **she does not believe that she is a beneficiary nor the Trustee of the said Trust Deed and the Note**. (See bankruptcy court record as Lin of Artesia's Declaration)

Therefore, the old declaration of February 23, 2005 of Lin of Artesia and the Stipulation Agreement between Trustee and Lin of Artesia to sell the house are null and void, Lin of China is the only one real beneficiary and trustee of the DOT and Note.

On April 3, 2008, the court ordered dismissed trustee's adversary declaratory judgment action which against Lin of China for lack of progress by the trustee.

On April, 3, 2008, in the case of CC-08-1002, the BAP **again,** ruled in favor of debtor and directing the court that:

> *Nor does the math support the proposition that it is necessary first to resolve the ownership of the Lin Lien: using the trustee's figures, as November 2008 he will be holding $159,000 proceeds of the sale, after payoff of the Lin Lien.* ***He has not established any right to surcharge the debtor's homestead in any amount, nor even brought a motion to do so since we reversed his earlier attempt.*** *Nor is it at clear that the trustee is entitled to recover any fees as the successor of Lili Lin of Artesia, even if she is ultimately determined to be the real Lili Lin, and the assignment of her deed of trust is effective.*

We see no reason why the court should not direct the disbursement of debtor's homestead exemption to him in 60 days, *less the amount of any surcharge motion supported with evidence prima facie establishing the propriety of a surcharge in that amount, and except to the extent that the trustee can establish that payment of the homestead would impair his ability to pay Lili Lin of China on the deed of trust were she to prevail.* (Memo of BAP CC-08-1002)

On April 10, 2008, Debtor was forced to file his **Third Motion** for an Order to pay Debtor's Homestead Exemption pursuant to the direction of BAP.

On April 24, 2008, the trustee filed his **Second Motion** surcharge debtor's homestead exemption. Debtor filed an Opposition. Trustee filed a reply.

On May 21, 2008, the hearing of both motions of debtor and trustee were held in the bankruptcy court, trustee again requested continue the motions because **he did not have enough evidence,** trustee stated in the court that he want to take depositions of Andrew Smyth, Lin of China's former attorney and Peter Chow, Lin of China's present attorney, and the Debtor. The Judge Donovan again granted trustee's request and the motions were continued to September 17, 2008.

On September 17, 2008, in the bankruptcy court, trustee again request continue of the motion because **he did not have enough evidence**, he want to submit all the transcripts to the court. Judge Donovan again granted his request, and the motions were finally set on November 5, 2008.

On October 22, 2008, trustee filed his supplemental Memorandum of Points and Authorities and exhibits including only 32 pages of 232 pages of transcript of two days deposition of Debtor. No transcripts of Andrew Smyth and Peter Chow were filed.

On October 22, 2008, Debtor also filed and served his Supplemental evidence in support of his **Third motion** for homestead exemption with 11 new exhibits including documents of Subpoena to County Records Research Inc. and a responses from Mr.

Robert M. Cowan, the **Director of U.S. Citizenship and Immigration Services Center** ("USCIS") of United States Department of Homeland Security to Debtor's subpoenaed request for documents of Lili Lin of China for Immigrant Petition for Relative. The USCIS's respond documents clear show that Lili Lin of China's Immigrant Petition is pending in the USCIS, and the Case Status Search report of October 21, 2008 clear show that Lili Lin's Immigrant Petition was received by U.S. government on June 6, 2007, and is pending in the USCIS of the Department of Homeland Security. Now the **United States government has the record of Lin of China**.

Therefore, it is absolutely abundantly clear that Lili Lin of China has been lived in China; trustee's allegation no such person Lili Lin is totally absolutely silly, ludicrous.

On November 5, 2008, the both motions of Debtor's third claim homestead Exemption and trustee's second surcharge homestead motion were held in the bankruptcy court. The court granted trustee's motion based on that Lin of China's DOT is fraudulent and because of trustee spent a lot of money to the surcharge issue and shifting litigation expenses to the debtor **in a fashion designed to punish the debtor for his litigation activity and protection of his constitutional rights.**

On January 14, 2009, in the case 07-55200, Court of Appeals for the Ninth Circuit issued a Memorandum decision affirmed BAP's decision against trustee's appeal re issue of Lili Lin of China's lien and reversing bankruptcy court's order granting trustee's surcharge debtor's homestead exemption motion, and stated that:

> *The BAP properly reversed the bankruptcy court's order granting the trustee's surcharge motion because, without an adequate accounting of what litigation expenses should be reimbursed from Lau's exemption, the order appears to shift litigation expenses to the debtor in a fashion designed to punish the debtor for his litigation activity.* (Memorandum of COA 9th Circuit. 07-55200)

Obviously, the 9th Circuit believed that there are no such fraudulent of deed of trust in this case and shifting litigation expenses to the debtor in a fashion designed to punish the debtor for his litigation activity was wrong.

On February 20, 2009, more than **three months** after the hearings of surcharge motion, the court issued a Memorandum re trustee's second motion to surcharge debtor's homestead exemption **based** on trustee's Supplemental request for judicial notice in support of the motion which was filed on November 20, 2009, fifteen (15) days after the order was announced on November 5, 2009. **This is wrong trial procedure**.

On March 2, 2009, Debtor filed a Notice of Appeal re second surcharge motion.

On October 22, 2009, the BAP issued a Memorandum affirming bankruptcy court's second surcharge motion. (BAP CC-09-1077, Appendix B)

On November 8, 2009, appellant filed a Notice of Appeal to 9th Circuit.

On June 6, 2011, the Court of Appeals for the 9th Circuit issued a Memorandum affirming BAP's decision. (COA. case 09-60046, Appendix A)

On June 17, 2011, Petitioner filed petition for rehearing.

On April 18, 2012, the 9th Circuit denied petition for rehearing. (Appendix C)

II.

NINTH CIRCUIT'S MEMORANDUM IS DIRECTLY CONFLICT WITH AN OPINION BY OTHER CIRCUIT COURT & SUPREME COURT

A. BAP's memorandum is conflict with his owned three decisions in favor of debtor and trustee's second surcharge motion is res judicate

The bankruptcy court ordered granting trustee's second surcharge motion based on fraud and no such person of Lin of China who loan money to debtor. But the court never has a trial on Lin of China, and never has finding of facts conclusion of law,

judicial determination judgment on Lin of China's lien, and trustee's action against Lin of China was dismissed by the court which appeared abused his discretion.

In addition, the BAP is in fact reversed the orders but in his other opinion that the surcharge was calculated to compensate the estate for the actual monetary costs imposed by the debtor's misconduct. **This is also absolutely incorrect** and all conflict with his owned three decisions.

The BAP quoted a case *Onubah v. Zamora* 375 B.R. 549 (9th Cir. BAP 2007) which the debtor refused to cooperate turnover his residence to trustee who paid $20,000 in legal fees, $5,000 for services of U.S. Marshal, $1,873.40 to change the locks, and $23,544.78 for removal and storage of Onubah's household good. Trustee then surcharged the homestead exemption.

To the contrary, in the present case, debtor has paid for more than two years house payments since the bankruptcy filing, kept the house in excellent condition and voluntarily turns it over to the trustee; therefore the house was sold for **$680,000.00** The estate received about **$500,000.00** after all the costs. Debtor should have equity about **$316,652.00** in the estate. The estate paid $120,000 to the creditor Cau-Min Li, the only one creditor estate paid. The trustee and his attorneys carved up rest of **$410,200.00** for their benefits only. (Estate eared interest about $30,200.00) Now, the trustee and his attorneys took all the money from Debtor even Debtor's down payment of $50,000 of 24 years ago and the homestead exemption of $75,000. **That is absolutely unfair, unjust. No such case in the bankruptcy history.**

Therefore, the BAP is misquoted the case Onubah which is totally, absolutely not apply to the instant case.

In addition, the estate has more than $159,000 surplus for Debtor's homestead exemption as the BAP stated in his Memorandum of CC-08-1002 re the Court denying debtor's second motion for homestead and ruled in favor of debtor directing that:

> *Nor does the math support the proposition that it is necessary first to resolve the ownership of the Lin Lien: using the trustee's figures, as November 2008 he will be holding $159,000 proceeds of the sale, after payoff of the Lin Lien. He has not established any right to surcharge the debtor's homestead in any amount, nor even brought a motion to do so since we reversed his earlier attempt.*

Res judicata precludes the parties from re-litigating the same issues of fact or law that is necessary to a judgment that has been entered. Parties are also precluded from relitigating issues that were, or could have been raised in the action. *Kremer v. Chemical Constr. Corp.*, 456 U.D. 461, 72 L. Ed. 2d 262, 102S. Ct. 1883, 28 Fair Empl. Prac. Cas. (BNA) 1412, 28 Empl. Prac. Dec. (CCH) 32674 (1982). Therefore, trustee's motion is mere re-litigating the same issue so that it is res judicata.

The law of the case should not constrain appellate review of a lower court's decision unless a party fails to challenge that decision in an *actual* appeal. *See id.* at 992–93; *see also Capps v. Sullivan*, 13 F.3d 350, 353 (10th Cir. 1993) (declining to review an issue because the parties did not contest it in their prior appeal); *Laffey v. Nw. Airlines, Inc.*, 740 F.2d 1071, 1090 (D.C. Cir. 1984) (explaining that when a party fails to challenge a decision in its first appeal, that appeal affirms the lower court's decision for purposes of the law of the case). If no appeal is taken, as was the case here, the opposite doctrine is that of issue preclusion. *See generally* Charles Alan Wright et al., 18A Federal Practice and Procedure § 4433 (2d ed. 2002); *see also id.* 18B Federal Practice and Procedure § 4478.6, at 819 ("If no one appeals on any issue, the judgment of the trial court moves into the realm of res judicata.") The doctrine of issue preclusion "comes into play when an issue involved in a prior decision is the same issue involved in a subsequent action." *See Mabry v. State Bd. of Community Colleges & Occupational Educ.*, 813 F.2d 311, 316 (10th Cir. 1987).

Obviously, trustee's first and second surcharge motions based on the same grounds by falsely charged debtor for fraud without any of new evidence and merely re-

litigated the same issue which has been reversed by the BAP on December 29, 2006, and affirmed by the court of appeal of 9th Circuit on January 14, 2009.

The BAP is also wrong here. Although the BAP allow trustee may re-file his surcharge motion but *any such relief should be supported by* ***specific findings of fact and appropriate conclusions of law*** *regarding the debtor's conduct, including an* ***adequate explanation*** *why any surcharge based on specific damages or expenses incurred by the estate should be reimbursed from the debtor's exemptions."* Trustee only presented same exhibits as his first surcharge motion except 32 pages of 232 pages of the transcript of debtor's two days deposition and the court has not ***first obtained a judicial determination establishing Lili Lin of China's lien status in those proceeds.*** (See BAP CC-06-1180)

B. Bankruptcy Court cannot allow the surcharge to extent to debtor's Constitutionally protected homestead property

In re Mazon, 368 B.R. 906 (Bankr. M.D. Fla. 2007), the debtors failed to disclose in their bankruptcy schedules nonexempt assets valued at approximately $615,000.00. Further, after filing bankruptcy, the debtors dissipated those assets, therefore keeping them out of the trustee's reach. Upon learning of the debtors' **misconduct**, the chapter 7 trustee filed a motion to surcharge the debtors' exempt assets, including their homestead property. The court agreed with the trustee that the debtors' failed to schedule and turnover estate assets and therefore the trustee could equitably surcharge the debtors' statutorily exempt property. The court, however, would not allow the surcharge to extend to the debtors' constitutionally protected homestead property. The Mazon court did not surcharge the homestead property because none of the dissipated estate assets

could be traced into the debtor's homestead. The court further pointed to the case of *In re Chauncey*, 454 F.3d 1292 (11th Cir. 2006) which reaffirmed that an equitable lien may only be imposed under Florida Law when money used to obtain an interest in the homestead property is obtained by fraud or egregious conduct. Id. At 912.

It is widely accepted that property deemed exempt from a debtor's bankruptcy estate reverts in the debtor. See 11 U.S.C. S 522(l); see also *In re Brown*, 178 B.R. 722, 726-27 (Bankr. E.D. Tenn. 1995) (citing cases to that effect), *Owen v. Owen*, 500 U.S. 305, 308 (1991) (when property becomes exempt, it is "withdrawn from the estate (and hence from the creditors) for the benefit of the debtor"); *In re Bell*, 225 F.3d at 215-216.

In *Taylor*, the Supreme Court emphasized its concern with keeping the bankruptcy process moving by insisting on firm, explicit deadlines. See 503 U.S. at 644. As a matter of policy, this should work no great hardship, even in the conversion of bankruptcy proceedings from Chapter 11 to Chapter 7. The purpose of the creditors meeting is to question the debtor about his debts, and to examine him about his claimed exemptions. Furthermore, should this process become unduly cumbersome, the trustee or creditors may simply object to any exemptions that remain nor under-explained. That did not happen in this case. Because the meeting of creditors concluded, at the latest, thirty days after it was adjourned indefinitely, because conversion does not restart the time to object, and because property that is exempted vests in the debtor upon the creditor and trustee's failure timely to object. *Once the period to object to a claimed exemption expires, a party-in-interest is time-barred from challenging the validity of the exemption claim, **and the property claimed as exempt is exempt.** 12 Smith v. Kennedy (In re Smith), 235 F.3d 472, 475 (9th Cir. 2000). "[D]eadlines may lead to unwelcome*

results, but they prompt parties to act and they produce finality." Smith, 235 F.3d at 476 (quoting Taylor v. Freeland & Kronz, 503 U.S.638, 644 (1992)) Similar to an unstayed judgment, ***an unopposed homestead exemption claim stands final.***

Therefore, debtor respectfully requests the Supreme Court following the decisions of *Smith, Taylor, Mazon* and *Owen v. Owen* cases reversing the surcharged orders.

In addition, the Bankruptcy court of Central District of California in case SV05-14975 issued 13 pages Memorandum Decision order denying Trustee's surcharge motion.

The court stated that:

"Of all the published opinions granting surcharge of a Debtor's exemption, there are real only two general categories of case that have permitted surcharge (1) those permitting surcharge as form of sanctions; (2) those permitting surcharge as a form of offset, As will be shown, neither form of surcharge is appropriate in this case.

a. Sanctions-Based Surcharges

A number of cases have permitted surcharge of a debtor's exemption as form of sanction. In In re Swanson, 207 B.R. 76 (Bankr.D.N.J. 1997), the court held that the trustee was entitle to deduct from the debtor's homestead damages incurred because of the debtor's contempt. In In re Stinson, 221 B.R. 726, 732 (Bankr.E.D. Mich. 1998), the court allowed the complete surcharge of debtor's exemption in settlement proceeding where the debtor wrongfully procured settlement without the trustee's authorization. The court reasoned that this was reasonable given that the trustee might have been able to get more out of the settlement. Finally, in In re Karl, 313 B.R. 827.832 (Bankr.W.D. Mo.2005) the court allowed a surcharge of the homestead exemption for attorney's fees and costs as form of sanction for contempt. Under the facts of the above cases, applying 11 U.S.C. section 105(a) to surcharge exemptions is justified because it is a mere application of the court's contempt power. Just as the court can compel the debtor in contempt to pay another party out of his or her own funds, the court can compel the debtor to make this payment in the form of a surcharge. The policy concerns behind 11 U.S.C. section 522(k) are outweighed by the court's need to maintain order and decorum and ensure proper function of the system.

b. Offset-Based Surcharges

A number of cases have permitted surcharge of a debtor's exemption as form of offset. For example, in In re Karl, 313 B.R. 827, 832) Bankr. W.D. Mo2004), the court allowed the surcharge of the debtor's homestead exemption in the amount of the value of the debtor's unauthorized post-petition transfer. The court treated the post-petition as if it were an advance on the debtor's exemption, and surcharges the exemption accordingly. Similarly, in In re Bogan, 302 B.R. 524, 529(bankr W.D.

Pa.2003) the court granted a surcharge of all of the debtor's exemptions where the debtor had embezzled $400,000 from her employer while in bankruptcy and had failed to provide an explanation of where these funds went. The court held that, under these facts, it would be an abuse of the bankruptcy process to allow any exemption. The logic seems to be that because the debtor retained the benefit of these illicit funds outside of the control of the trustee, it would be inappropriate to give the debtor a double benefit by allowing her to claim exemptions as well. Finally, Latman v. Burdette, 366F.3d 744(9th Cir. 2004), which the Trustee heavily relies upon, also falls into this category.

In the instant case, neither two of form of surcharge is appropriate in this case. There is no either sanction-based or offset-based surcharge in this case. Even if the court's authority to surcharge an exemption does extend beyond the two categories of cases, it does not extend so far as to reach the facts of this case.

The Code contains specific provisions governing exemptions. *See* 11 U.S.C. § 522. Generally, if the debtor claims property as exempt and "a party in interest" does not object, that property is exempt from property of the estate. *See* § 522(*l*); *see also* Fed. R. Bankr. P. 4003. Furthermore, the Code contains a limited number of exceptions to the rule that exempted property cannot be used to satisfy pre-petition debts or **administrative expenses**. *See* § 522(c). (k).). *Scrivner v. Mashburn* (*In re Scrivner)* 370 B.R. 346,352-354 (10th Cir BAP2007)

The homestead exemption of $75,000 just likes debtor's house down payment of 24 years ago. Accordingly, the focus must be upon how the money is *obtained* and not upon how the money is *used*. *In re Cameron*, 359 B.R. 818, 822 (Bankr. M.D. Fla. 2006) (citing *In re Johnson*, 336 B.R. 568, 572 (Bankr. S.D. Fla. 2006). Money lawfully obtained that is thereafter improperly used does not support the imposition of an equitable lien against homestead property. *Id.*

C. Debtor's appeals are not frivolous there are no misconduct by the debtor

The bankruptcy court and the BAP citing debtor's appeals are frivolous and his misconduct incurred trustee spent more time and fund to file the Declaratory action against Lin of China. As matter of fact, it was BAP required trustee to obtain an appropriate judicial determination on Lin of China's lien. Furthermore, because BAP revered the court order granting trustee's first surcharge motion that incurred trustee spent a lot of fund to answer debtor's three motions for payment of homestead exemption and filing second surcharge motion. This is most ridiculous and ludicrous sophistry in the law litigation history. **Since it was the BAP and the Court of Appeal revered bankruptcy court's three orders, is it the surcharge shall be imposed on BAP and Court of Appeal?**

The BAP's Memorandum of October 5, 2008 stated that *Although the debtor's conduct toward the bankruptcy court and the trustee had been both resistant and antagonistic, his* ***proven*** *conduct* ***did not equate with bad faith.*** The court also repeated in the hearings that debtor's conduct is not bad faith and he did prevail in some of issues in the Bankruptcy Appellate Panel, and Court of Appeals.

In addition, debtor has rights to appeal as well as the trustee has rights to appeal BAP's judgment. Debtor did prevail some of the issues on the appeals such as the BAP reversed the court's order granting trustee's first surcharge motion, and the BAP reversed and remand the court orders denying debtor's first motion for an order directing trustee to pay debtor's homestead exemption, and BAP ruled in favor of debtor for his second motion for homestead exemption and directing the Court that:

Nor does the math support the proposition that it is necessary first to resolve the ownership of the Lin Lien: using the trustee's figures, as November 2008 he will be holding $159,000 proceeds of the sale, after payoff of the Lin Lien. ***He has not established any right to surcharge the debtor's homestead in any amount, nor even brought a motion to do so since we reversed his earlier attempt.*** *Nor is it at clear that the trustee is entitled to recover any fees as the successor of Lili Lin of Artesia, even if she is ultimately determined to be the real Lili Lin, and the assignment of her deed of trust is effective.*

It is unclear how the trustee could claim ***any fees*** *under that provision for work done prior to his becoming the beneficiary on 19 May 2005. And the fight since seems largely to be over who the original beneficiary was, with excursions into whether debtor's exemption should be surcharged.* ***It is highly doubtful that any of the trustee's attorneys' fees relating to those issues can be properly construed as affecting "the rights or powers of Beneficiary or Trustee" under the deed of trust*** *– there has been no challenge to its enforceability or the amount due.*

We see no reason why the court should not direct the disbursement of debtor's homestead exemption to him in 60 days*, less the amount of any surcharge motion supported with evidence prima facie establishing the propriety of a surcharge in that amount, and except to the extent that the trustee can establish that payment of the homestead would impair his ability to pay Lili Lin of China on the deed of trust were she to prevail.* (BAP CC-08-1002)

Obviously, debtor's appeals are not bad faith or frivolous or misconduct.

As matter of facts, trustee's two appeals to the court of appeals and his numerous of motions are frivolous all have been denied such as his motion to dismiss debtor's appeal; motion for sanction against Lin of China, motion for modify court order, motion for consolidation, motion for request to enter default against Lin of China, and motion to suspend the appeal and the Declaratory action against Lin of China was dismissed. How the debtor's appeals are frivolous or in bad faith?

As matter of facts, litigant is not debtor's job, debtor just want to make fair settlement, therefore, he made numerous of good faith settlement offers to trustee before the appeals commence and after the BAP ruled in favor of debtor, but unfortunate, trustee refused to take the offers but insist to file two appeals to the 9th Circuit and the

Declaratory action in the court. Trustee is very very greedy, his attorney Ezra/Brutzkus/Gubner LLP ("EBG") took $250.000 on his first interim application on April 3, 2008 and then the Judge Donovan again granted his final interim application for $472,124.19 which application did not service on the Debtor on November 3, 2010. (See BAP CC-10-1499) Trustee and his attorneys want to take all of funds of $530,000.00 to their packet without to pay any of creditors including debtor. More importantly, there are no creditor would get any of the benefit for selling debtor's real property. **This is the main point of the case.** The trustee to sell debtor's real property only for his benefit and his attorney fees and trustee's misconducts are in bad faith.

III.

CONCLUSION

Based on all the grounds have been given above. Petitioner respectfully requests the Supreme Court grant the Petition and reverse the lower courts' decisions, and directing the bankruptcy court enter an order to pay petitioner $75,000 homestead exemption forthwith, and order debtor's real property's equity of $316,652.00 should belong to debtor who paid for all the payments until trustee sold the house and remand the case to a Judge other than Judge Donovan for further proceeding because Judge Donovan has personal prejudice against petitioner who does not has fair hearings and trial before Judge Donovan.

Dated: July 4, 2012

Respectfully submitted,

Stephen Law
Petitioner pro se

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Stephen Law - Petitioner

Vs.

United States Court of Appeals for the Ninth Circuit – Respondent

On Petition for a Writ of Certiorari to

The United States Court of Appeal for the Ninth Circuit

APPENDICES

Volume 1 of 1

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FILED

JUN 06 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: STEPHEN LAW, Debtor,	No. 09-60046 BAP No. 09-1077-PaMkH
STEPHEN LAW, Appellant, v. ALFRED H. SIEGEL, Chapter 7 Trustee, Appellee.	MEMORANDUM*

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Pappas, Markell, and Hollowell, Bankruptcy Judges, Presiding

Submitted May 24, 2011**

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Stephen Law, a Chapter 7 debtor, appeals pro se from the Bankruptcy Appellate Panel's ("BAP") order affirming the bankruptcy court's orders surcharging Law's homestead exemption and imposing discovery sanctions. We have jurisdiction under 28 U.S.C. § 158(d). We review de novo the bankruptcy court's conclusions of law and for clear error its factual findings. *Latman v. Burdette*, 366 F.3d 774, 781 (9th Cir. 2004). We review for an abuse of discretion the imposition of discovery sanctions. *Freeman v. San Diego Ass'n of Realtors*, 322 F.3d 1133, 1156 (9th Cir. 2003). We affirm.

The BAP properly affirmed the bankruptcy court's order granting the trustee's surcharge motion because the surcharge was calculated to compensate the estate for the actual monetary costs imposed by the debtor's misconduct, and was warranted to protect the integrity of the bankruptcy process. *See Latman*, 366 F.3d at 786 (recognizing inherent power of bankruptcy courts to equitably surcharge a debtor's exemption to protect integrity of the bankruptcy process and to ensure that debtor does not exempt amount greater than allowed under Bankruptcy Code); *see also Onubah v. Zamora (In re Onubah)*, 375 B.R. 549, 556 (9th Cir. BAP 2007) (a surcharge should be calculated to compensate the estate for the actual monetary costs imposed by the debtor's misconduct).

The BAP properly affirmed the bankruptcy court's order imposing discovery sanctions on Law, in light of Law's refusal to comply with the trustee's permissible discovery requests in a contested matter. *See* Fed. R. Bankr. P 9014 (Bankruptcy Rules 7028-7037 apply in contested matters); Fed. R. Bankr. P 7030 (permitting depositions as outlined in Fed. R. Civ. P 30); Fed. R. Bankr. P. 7034 (providing for requests for production of documents as outlined in Fed. R. Civ. P 34).

Law's remaining contentions are unpersuasive.

AFFIRMED.

FILED

OCT 22 2009

SUSAN M SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. CC-09-1077-PaMkH
STEPHEN LAW,	Bk. No. LA 04-10052-TD
Debtor.	
STEPHEN LAW,	
Appellant,	
v.	**M E M O R A N D U M**
ALFRED H. SIEGEL, Chapter 7 Trustee,	
Appellee.	

Submitted Without Oral Argument on September 25, 2009[2]

Filed - October 22, 2009

Appeal from the United States Bankruptcy Court
for the Central District of California

Hon. Thomas Donovan, United States Bankruptcy Judge, Presiding.

Before: PAPPAS, MARKELL and HOLLOWELL, Bankruptcy Judges.

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[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

[2] By Order entered on September 1, 2009, the Panel approved the stipulation of the parties that this appeal be decided on the briefs and record without oral argument. 9th Cir. BAP Rule 8012-1.

Chapter 7[1] debtor Stephen Law ("Debtor") appeals an order entered by the bankruptcy court surcharging his entire homestead exemption of $75,000. Debtor also appeals an order compelling his attendance at a deposition and imposing a sanction of $3,520 payable to the trustee for failure to comply timely with discovery requests. We AFFIRM both orders.

FACTS[2]

On January 5, 2004, Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code. Alfred H. Siegel was appointed to serve as chapter 7 trustee ("Trustee"). Debtor's residence in Hacienda Heights, California (the "Property") was the sole asset of the bankruptcy estate.

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[1] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, as enacted and promulgated prior to the effective date (October 17, 2005) of the relevant provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, April 20, 2005, 119 Stat. 23, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The Federal Rules of Civil Procedure are referred to as "Civil Rules."

[2] The many disputes involving Debtor arising in his bankruptcy case have resulted in over a dozen appeals to the Panel and several to the Court of Appeals. In its many decisions issued over the years, the Panel has provided in great detail the facts surrounding Debtor's bankruptcy filings, and his numerous contests with the chapter 7 trustee concerning the administration of the bankruptcy estate. See, e.g., Law v. Siegel (In re Law), BAP nos. CC-05-1303/1344 (9th Cir. BAP December 29, 2006), aff'd 308 F. App'x 161 (9th Cir. 2009); Lin v. Siegel (In re Law), BAP nos. CC-06-1427/1379 (9th Cir. BAP July 10, 2007), aff'd 308 F. App'x 152 (9th Cir. 2009); Law v. Siegel (In re Law), BAP no. CC-07-1127 (9th Cir. BAP October 5, 2007). Those BAP decisions are available through PACER or via the Panel's public website, available at http://www.bap09.uscourts.gov. Because the facts are well known to the parties to this appeal, and to avoid unnecessary repetition in the record, we recount here only those facts relevant to the instant appeal.

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Debtor claimed a $75,000 homestead exemption in the Property. Debtor's schedules indicated the Property had a value of $363,348 and that it was subject to two voluntary liens at the time of the bankruptcy filing. The first priority lien was a note and deed of trust in favor of Washington Mutual Bank in the amount of $147,156.52; the second priority lien was, allegedly, a note and deed of trust for $156,929.04 in favor of "Lin's Mortgage & Associates."

The First Surcharge Motion

On January 5, 2006, Trustee moved to sell the Property.[5] At the same time, Trustee filed a motion to surcharge Debtor's homestead exemption ("First Surcharge Motion") contending that Debtor had engaged in fraudulent conduct, exhibited bad faith by pursuing frivolous litigation, and failed to comply with the bankruptcy court's orders regarding Trustee's administration of the Property. In particular, Trustee alleged that Debtor had lied about the existence and bona fides of the alleged second mortgage on the Property held by the creditor known as Lili Lin.

Debtor responded to the First Surcharge Motion, denied that he had engaged in any fraudulent conduct, declared that he had

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[5] The bankruptcy court conducted a hearing on the sale motion on February 1, 2006, at which Trustee was represented by counsel and Debtor appeared pro se. The court approved the sale motion by order entered February 14, 2006; escrow closed and the Property was sold on March 9, 2006. The sale proceeds totaled $208,777.91 after payment of all costs of sale and satisfaction of the first mortgage. The sale proceeds are held by Trustee. Debtor objected to the sale and appealed the sale order to the Panel on February 6, 2006. Debtor's motions to obtain a stay pending appeal were denied by both the Panel and the Ninth Circuit and Debtor's appeal was dismissed as moot on December 29, 2006. Law v. Siegel (In re Law), BAP no. CC-05-1344 (9th Cir. BAP December 29, 2006).

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borrowed a total of $168,000 from Lili "Lin of China"[6] and that he had secured the loan with the second deed of trust on the Property. Attached to Debtor's declaration was another declaration, purportedly executed by Lili Lin of China in Guangzou, China, stating that she had indeed lent that sum to Debtor and held the second deed of trust on the Property to secure the loan.

On March 22, 2006, the bankruptcy court granted the First Surcharge Motion. In deciding to surcharge Debtor's homestead, the bankruptcy court observed,

> [I]t seems to me that all things considered, it is basically Mr. Law's conduct that has been the direct cause of the expenses that have been incurred by the Trustee. . . . I would have to surmise that substantial additional expenses are going to be incurred by the estate in defending Mr. Law's appeals.[7]

Debtor appealed the bankruptcy court's order granting the First Surcharge Motion to this Panel. On December 29, 2006, the Panel reversed the bankruptcy court's order. The Panel acknowledged that Debtor had exhibited "misconduct, obstinance, blatant ignorance of court orders and directives, animosity toward the court and the trustee, and efforts to thwart administration of the case. . . ." In re Law, BAP nos. CC-05-1303/1334, Memorandum at 17. Even so, the Panel reasoned that:

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[6] The quotation marks around "Lin of China" are also found in Debtor's declaration. Dkt. no. 100.

[7] This is a quotation taken from the Panel's decision in In re Law, BAP nos. CC-05-1303/1334, at 7-8, and is attributed therein to the bankruptcy court's concluding remarks at the March 22, 2006 hearing. A transcript of that hearing is not included in the current record on appeal. We cite to the various unpublished memoranda involving Debtor under the doctrine of law of the case

> Regardless of the debtor's tactics, it is apparent that the debtor was not abusing his exemptions and that the trustee was not seeking to remedy such abuse. Rather, the intent of the trustee was to punish the debtor for his tactics. The sort of extraordinary circumstances that would be a prerequisite to surcharge have not been demonstrated.
>
> Similarly, it is apparent that the court was merely shifting litigation expenses to the debtor in a fashion designed to punish the debtor for his litigation activity.

Id. Significantly, while reversing the surcharge order, the Panel expressed "no opinion whether specific instances of mischief by the debtor in the past might support [a future] surcharge against his exemption. . . . Any such relief to the trustee should be supported by specific findings of fact and appropriate conclusions of law regarding the debtor's conduct[.]" Id.

Trustee appealed the Panel's decision to the Ninth Circuit, which affirmed the Panel's decision. In re Law, 308 F. App'x 161.

In the meantime, on February 5, 2007, Debtor filed a motion for an order directing Trustee to pay him his claimed homestead exemption from the proceeds of the sale of the Property, and to sanction Trustee for his alleged bad faith in refusing to comply with the Panel's decision reversing the order approving the First Surcharge Motion. The bankruptcy court denied Debtor's motion at a hearing on February 28, 2007, on the grounds that it lacked jurisdiction to rule on distribution of the exemption proceeds while the order granting the First Surcharge Motion was on appeal to the court of appeals. Debtor, in turn, appealed this denial to the Panel, and the Panel reversed the bankruptcy court's decision on October 5, 2007.

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The Panel held that, though an appeal to the court of appeals was pending, the bankruptcy court retained the authority to enforce a final judgment that had not been stayed or superseded. When Trustee did not timely oppose Debtor's homestead exemption claim, the exemption became final, and the bankruptcy court therefore had jurisdiction to authorize payment of the exemption, regardless of appeals on other matters. In re Law, BAP no. 07-1127, Memorandum at 10-11.

Nevertheless, in its decision the Panel again made it clear that, while it was ruling solely on the right of Debtor to an unopposed homestead exemption, such exemption might still be:

> subject to surcharge, based upon an appropriately supported motion filed by the trustee. Although a surcharge cannot be used to punish a debtor, Onubah v. Zamora (In re Onubah), 2007 WL 2701336 at *6 (9th Cir. BAP August 29, 2007), it may be used to prevent fraud, caused by the debtor's misconduct, upon the court and estate creditors, Latman v. Burdette, 366 F.3d 774, 785 (9th Cir. 2004). . . The trustee may renew his motion to surcharge the debtor's claimed homeowner's exemption, as long as appropriate factual and legal bases exist to justify such a surcharge under the standards set out in Latman and Onubah.

Id. at 11-12.

The Second Surcharge Motion

On April 24, 2008, Trustee filed another Motion to Surcharge Debtor's Homestead Exemption (the "Second Surcharge Motion"). The Second Surcharge Motion alleged, among other issues, that (1) the second deed of trust on the Property was fictitious and fraudulent, intended by Debtor to falsely encumber the Property so as to discourage its sale as part of a scheme by Debtor to defraud his creditors; (2) Debtor had perjured himself twice, once by listing the second deed of trust in his schedules, and again in

knowingly attaching a fraudulent promissory note to his motion to reconsider the order approving sale of the Property; and (3) Debtor created a "Lili Lin of China" who either did not exist or, if she did exist, had no interest in the Property, in furtherance of his efforts to frustrate Trustee's administration of the Property and to otherwise exhaust the assets of the estate.

Debtor responded to the Second Surcharge Motion on May 7, 2008, generally denying its allegations and, alternatively, arguing that the BAP's decision on the First Surcharge Motion was res judicata, barring consideration of the Second Surcharge Motion by the bankruptcy court.

On May 28, 2008, Trustee served a Notice of Deposition and Request for Production of Documents on Debtor regarding the Second Surcharge Motion. There followed an extensive discovery dispute between the parties, with Debtor generally refusing to cooperate with Trustee. Trustee and Debtor submitted a summary of the dispute to the bankruptcy court in a stipulation dated July 3-8, 2008. Trustee argued that he had the right to depose Debtor and to demand that he produce documents in a contested matter pursuant to Rules 7028-7037. Debtor countered that Trustee could have conducted the deposition years before and was only now deposing him for purposes of harassment. Additionally, Debtor argued that the requested production of documents would cost in excess of $3,000, and Debtor demanded that Trustee pay this in advance.

On July 8, 2008, Trustee submitted a Motion to Compel Debtor's Attendance at Deposition and Production of Documents and requested sanctions against Debtor of $3,520, payable to Trustee. On July 20, 2008, Debtor advised Trustee that he would agree to be

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deposed on July 28, 2008. However, Trustee informed Debtor that his consent had come too late, insofar as Trustee had filed the Motion to Compel. However, Trustee agreed to allow the deposition to go forward if Debtor compensated Trustee for the costs of bringing the Motion to Compel. In an apparent rejection of Trustee's offer, Debtor filed an opposition to the Motion to Compel on August 5, 2008, arguing that Trustee was harassing Debtor and acting in bad faith.

The bankruptcy court scheduled a hearing on the Motion to Compel on August 20, 2008, but indicated in a tentative ruling that appearances were not required. The tentative ruling provided that the court was inclined to grant Trustee's motion and to impose sanctions upon Debtor. There were no appearances at the hearing and, on August 28, 2008, the bankruptcy court entered its order directing Debtor to appear at a deposition and provide access to Trustee to the required documents. The order imposed monetary sanctions of $3,520 on Debtor.

On November 5, 2008, the bankruptcy court conducted a hearing on the Second Surcharge Motion. Trustee was represented by counsel and Debtor appeared pro se. At the conclusion of this hearing, the bankruptcy court announced its oral ruling in favor of Trustee. Hr'g Tr. 17:18-37:5 (November 5, 2008). The court later memorialized its decision in a Memorandum Decision entered on February 20, 2009. In granting the Second Surcharge Motion, the bankruptcy court found that Debtor had attempted to perpetrate a fiction and fraud on the court:

> This utter absence of credible, persuasive evidence, taken in the context of [] Debtor's demonstrated willingness to deceive this court by filing a false

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document – that is, the "birth date" promissory note;[8] (2) the myriad suspicious circumstances surrounding the disputed second deed of trust and Lili Lin of China's pleadings; (3) the inconsistencies in Debtor's statements regarding the loan proceeds; and (4) the Lili Lin of Artesia "foreclosure" episode,[9] leads me to conclude that no person named Lili Lin ever made a loan to Debtor in exchange for the disputed deed of trust on Debtor's residence. The preponderance of the evidence clearly shows that the loan was a fiction, meant to preserve Debtor's equity in his residence beyond what he was entitled to exempt as a homeowner, and a fraud on his creditors and the court.

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[8] The bankruptcy court found that Debtor had prepared two almost identical promissory notes in June 1999, in an attempt to document the alleged loan of $168,000 secured by the second deed of trust on the Property. One note included a birth date of Lili Lin of November 22, 1947, while the other had no birth date. The court found that Debtor could not explain why he prepared and notarized two inconsistent documents.

The second deed of trust was recorded on June 28, 1999. Attached to the filed copy was the promissory note without the birth date. Los Angeles County Recorder's Office No. 9901179298. On February 19, 2006, Debtor and "Lili Lin of China" filed an opposition to the sale of the Property. Attached to Debtor's opposition as Exhibit F was a copy of the promissory note that Debtor asserted had been filed with the Los Angeles County Recorder's Office. However, this promissory note contained the birth date, which was that of the person Debtor represented to the bankruptcy court as Lili Lin of China.

In this regard, the bankruptcy court concluded that Debtor had submitted false evidence to the court.

[9] At the hearing, the bankruptcy court heard testimony from a woman named Lili Lin of Artesia. She stated she was an acquaintance of Debtor but had never loaned money to Debtor. Lin of Artesia testified that Debtor gave her a copy of the second deed of trust and promissory note, asking that she accept a check from him for $168,000 in "payment" of the loan, and then to return the money to him. Lin of Artesia refused. In February 2000, Los Angeles County Records Research received a letter purportedly from Lin of Artesia, although she says she never sent it. The letter sought to initiate foreclosure proceedings against the Property. At the same time, Lin of Artesia received documents from Debtor, including an assignment of the promissory note to Connie Chang, the debtor's ex-wife.

The bankruptcy court also heard testimony from Debtor. The court made a determination that Lin of Artesia was more credible. Based upon the evidence, the bankruptcy court concluded that Debtor concocted the second deed of trust in order to protect his equity from a judgment creditor, and then attempted to recover the protected equity by a sham transfer to his ex-wife.

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The bankruptcy court determined that, had Debtor not invented the second deed of trust and persisted in his misrepresentations to the court, ample funds would have been available in the bankruptcy case to pay Debtor's creditors and Trustee's costs, pay Debtor his full homestead exemption, and to return surplus funds to Debtor. However, as a result of the disputes over the fictitious second deed of trust, the court found that Trustee and the estate had incurred $456,112.50 in legal fees, an amount considerably in excess of Debtor's $75,000 homestead exemption, all of which were the direct result of Debtor's active misrepresentations to Trustee and to the court. Based upon its findings, the bankruptcy court concluded that:

> were Debtor to receive his homestead exemption, the financial consequences of Debtor's misconduct would fall most heavily upon Debtor's creditors, including Trustee and his attorneys. A surcharge must be levied to avoid this outcome. Because the actual costs to the estate far exceed $75,000 (the exemption to which Debtor would otherwise be entitled), I find that Debtor's homestead must be surcharged in its entirety.

On February 20, 2009, the bankruptcy court entered its order granting the Second Surcharge Motion and surcharging Debtor's homestead in its entirety of $75,000. Debtor filed a timely appeal of the bankruptcy court's surcharge order and discovery sanction order on March 2, 2009.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(A), (E) and (O). We have jurisdiction under 28 U.S.C. § 158.

ISSUES

1. Did the bankruptcy court abuse its discretion in imposing a surcharge on Debtor's homestead exemption?

2. Did the bankruptcy court abuse its discretion in compelling Debtor to attend a deposition and imposing discovery sanctions on him?

STANDARDS OF REVIEW

A bankruptcy court's decision to invoke the equitable remedy of surcharge of a debtor's homestead exemption is reviewed for abuse of discretion. Onubah v. Zamora (In re Onubah), 375 B.R. 549, 553 (9th Cir. BAP 2007). The findings of fact upon which a surcharge is based are reviewed for clear error, while the bankruptcy court's conclusions of law are reviewed de novo. Kelley v. Locke (In re Kelley), 300 B.R. 11, 16 (9th Cir. BAP 2003).

The imposition of discovery sanctions is reviewed for abuse of discretion. Freeman v. San Diego Ass'n of Realtors, 322 F.3d 1133, 1136 (9th Cir. 2003).

A trial court abuses its discretion if it bases its decision on an erroneous view of the law or clearly erroneous factual findings. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405 (1990). To reverse for abuse of discretion we must have a definite and firm conviction that the bankruptcy court committed a clear error of judgment in the conclusion it reached. Stasz v. Gonzalez (In re Stasz), 387 B.R. 271, 276 (9th Cir. BAP 2008).

DISCUSSION

I.

The bankruptcy court did not abuse its discretion in surcharging Debtor's homestead exemption.

The Bankruptcy Code does not expressly authorize surcharges against a debtor's exemptions. However, the Ninth Circuit has held that a bankruptcy court may equitably surcharge a debtor's statutory exemptions when reasonably necessary to protect the integrity of the bankruptcy process and to ensure that a debtor receives as exempt property an amount no more than what is permitted by the Bankruptcy Code. Latman v. Burdette, 366 F.3d 774, 786 (9th Cir. 2004).

In Latman, the bankruptcy court authorized a surcharge as a form of offset. The debtors had acted fraudulently in their bankruptcy case by intentionally failing to disclose certain assets, and the sale of those assets, in their schedules. When the trustee became aware of the assets and their sale, he sought an accounting from the debtors of the sale proceeds When they refused to provide the accounting and turn over the sale proceeds, the trustee moved to surcharge the debtors' exemptions. Latman, 366 F.3d at 779. In affirming the decision to impose a surcharge, the Ninth Circuit held that the bankruptcy court did not act to "punish" the debtors by denying them the value of their exemption. Rather, under the facts, the surcharge remedy fashioned by the bankruptcy court was intended to prevent what would otherwise have been a fraud on the bankruptcy court and the Latmans' creditors. Id. at 787

This Panel has also endorsed use of an exemption surcharge. In In re Onubah, the Panel applied the holding in Latman in an appeal from a surcharge of a homeowner's exemption. 375 B.R. at 553-58. In Onubah, the debtor claimed a $75,000 homestead exemption. The trustee arranged for a sale of the residence, which would generate $96,000 for the bankruptcy estate. While the debtor did not oppose the sale, he later attempted to block the sale by refusing to vacate the residence. The trustee was then forced to prosecute a motion for turnover. On the day the turnover motion was to be heard by the bankruptcy court, the debtor caused the case to be converted from chapter 7 to chapter 11. When the debtor was unable to explain to the bankruptcy court any legitimate purpose for the conversion, the trustee was able to obtain an order reconverting the case to chapter 7 and granting the turnover motion. But when the U.S. Marshal attempted to enforce the turnover order, the debtor informed him that an involuntary bankruptcy had been filed against him in another bankruptcy court, staying the sale. The trustee was thus forced to seek reassignment of the involuntary case to the bankruptcy judge presiding over the chapter 7 voluntary case so the sale could proceed. Ultimately, the bankruptcy court determined that the debtor had colluded with the involuntary petitioners in an effort to prevent the sale and to obstruct the trustee's administration of the estate.

In Onubah, the debtor's obstructionist and fraudulent conduct caused the trustee to expend over $50,000 of estate funds. The trustee filed a motion to surcharge the debtor's homestead

exemption to recover the expense. The bankruptcy court granted the motion.

On appeal, the Panel affirmed, agreeing that the debtor's inequitable conduct was not undertaken in good faith. In re Onubah, 375 B.R. at 554. The Panel explained that while Latman involved a case where the debtors had concealed assets, the surcharge remedy may be applied in other exceptional circumstances, too. For example, surcharge can be utilized where a debtor "abused the processes of the bankruptcy court" or where the debtor's "efforts at obstruction were not litigation tactics undertaken in good faith." Id. at 554. Citing a prior decision, the Panel observed that a debtor's conduct resulting in "prejudice to the estate or to the creditors causing actual economic loss may be the basis for the disallowance of an exemption, or conditioning its allowance on the debtor purging the effect of his prejudicial conduct." Id. at 555-56 (citing Arnold v. Gill (In re Arnold), 252 B.R. 778, 788-89 (9th Cir. BAP 2000)). Noting that while a "surcharge may not be used to shift costs to a debtor who has unsuccessfully, but in good faith, opposed a trustee's effort to liquidate [assets] or who has otherwise challenged the trustee's administration of the estate [. . . ,]" it is proper to impose a surcharge where required "to compensate the estate for the actual damage inflicted by [a debtor's] misconduct." Id. at 556.

Taken together, Latman and Onubah stand for the proposition that a surcharge of a debtor's exemptions is appropriate only in

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"exceptional circumstances." Latman, 366 F.3d at 786.[11] However, those exceptional circumstances justifying a surcharge exist when a debtor engages in inequitable or fraudulent conduct that, when left unchallenged, denies creditors access to property in excess of that which is properly exempted under the Bankruptcy Code. Latman, 366 F.3d at 786; In re Onubah, 376 B.R. at 554.

In this case, based upon an ample record, the bankruptcy court found Debtor had engaged in inequitable conduct, bad faith, and fraud on a truly egregious scale. As in Onubah, Debtor attempted to derail Trustee's sale of his house and the proper distribution of the sale proceeds. The bankruptcy court found that the Lili Lin of China second deed of trust was a fiction invented by Debtor, and that Debtor submitted a false document to the bankruptcy court, a promissory note that materially differed

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[11] Our concurring colleague, while acknowledging it applies under these facts, opines that the Ninth Circuit's decision in Latman is no longer "good policy" and describes the court's holding as an "outlier." Admittedly, the Tenth Circuit declined to follow Latman in Scrivner v. Mashburn (In re Scrivner), 535 F.3d 1258 (10th Cir. 2008). Notably, it reversed that circuit's BAP in doing so, which expressly endorsed the merits of Latman's approach. See Scrivner v. Mashburn (In re Scrivner), 370 B.R. 346, 352-354 (10th Cir. BAP 2007). Latman teaches that exemption surcharges should not be employed to punish debtors who vigorously, but unsuccessfully, litigate their interests in bankruptcy cases, restricting the use of the bankruptcy court's § 105(a) equitable powers in this context to "exceptional circumstances" where debtors have attempted to abuse or manipulate the bankruptcy system at their creditors' expense. Given these parameters, we disagree with the Tenth Circuit's conclusion that § 105(a) powers are unavailable to compensate for debtor fraud. Moreover, the advent of Rule 4003(b)(2) does not change this analysis. That rule provides a procedure, and establishes a time limit, for challenging the validity of a debtor's exemptions; it does not address situations where an exemption is claimed and allowed, but due to a debtor's bad conduct during the case, ought to be surcharged. Read fairly, the rule does not limit the scope of a bankruptcy court's powers when confronted with debtor fraud. In short, we believe Latman is not only binding here, but that it was correctly decided.

from the note filed with the Los Angeles County Recorder's Office, in an attempt to facilitate payment of the fictitious debt. Based on his many dealings with Debtor, the bankruptcy judge did not find credible Debtor's assertions that his submission of this document was accidental. This Panel gives special deference to credibility determinations made by the bankruptcy court. Rule 8013; Anderson v. City of Bessemer City, 470 U.S. 564, 573 (1985).

As in his other appeals, Debtor's position here is premised on the existence of a second deed of trust, supposedly granted to and owned by Lili Lin. Of course, had the second deed of trust existed, the total secured liens on the Property would have extinguished any equity in the Property, and Trustee would have had no reason to pursue the sale of the house.

The bankruptcy court heard testimony from Lili Lin of Artesia and Debtor concerning Debtor's attempts to construct a fraudulent second deed of trust to protect his equity from a judgment creditor, and then his attempt to recover the protected equity by a sham transfer from Lin of Artesia to his ex-wife. Lin of Artesia outlined Debtor's scheme, and the bankruptcy court found her testimony credible and Debtor's testimony not credible. Again, we give deference to these credibility findings.

Debtor argues that the "real" Lili Lin was the Lili Lin of China. The Panel, in its decision reversing the First Surcharge Motion, indicated that the Lili Lin of China claim had to be addressed by Trustee and the bankruptcy court. The bankruptcy court did so directly, and dismissed out of hand the notion that such a creditor or claim existed.

> Lili Lin of China has never filed a proof of claim in this case. Any pleading that she has filed in this case has proved to be a forgery, fictitious, nor worthy of consideration. And although I've given Lili Lin of China every opportunity that I'm capable of according to her, . . . no lawyer speaking on behalf of the purported Lili Lin of China has come forth with plausible evidence, credible evidence, useful evidence, persuasive evidence. The claim of Lili Lin of China simply does not exist.

Hr'g Tr. 33:4-19 (November 5, 2008). The bankruptcy court succinctly summarized its findings regarding Lili Lin of China in its Memorandum Decision:

> No person named Lili Lin ever made a loan to Debtor in exchange for the disputed deed of trust on Debtor's residence. The preponderance of the evidence[11] clearly shows that the loan was a fiction, meant to preserve Debtor's equity in his residence beyond what he was entitled to exempt as a homeowner, and a fraud on his creditors and the court.

Given this record, the bankruptcy court did not clearly err in finding that the second trust deed loan was a fiction intended by Debtor as a fraud on the court. Based upon the evidence and testimony, the court found that Debtor submitted a false document to support the Lin of China secured claim; there were numerous, suspicious circumstances surrounding the second deed of trust; there were inconsistencies in Debtor's statements about the loan

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[11] Although Debtor has not argued that the court erred in this regard, we note that the bankruptcy court correctly identified and applied the burden of proof concerning Trustee's surcharge motion. As in all exemption disputes, Trustee had the burden of proving that Debtor was not entitled to a portion of a claimed exemption. Rule 4003(c) ("the objecting party has the burden of proving that the exemptions are not properly claimed."). This burden may be satisfied by a preponderance of the evidence. See Gillman v. Ford (In re Ford), 492 F.3d 1148, 1155 (10th Cir. 2007) ("If the trustee fails to carry the burden of proving by a preponderance of the evidence that the exemption should be disallowed, the exemption will stand.") (quoting In re Cietta, 222 B.R. 626, 629 (Bankr. C.D. Cal. 1998)).

proceeds; and Debtor attempted to create a sham transaction through Lin of Artesia.

Based upon these factual findings, the bankruptcy court did not abuse its discretion in deciding to impose an equitable surcharge on Debtor's homestead exemption. Had it not done so, Debtor's scheme may have succeeded in frustrating Trustee's efforts to generate funds from the sale of the Property for the benefit of Debtor's creditors. To protect the integrity of the bankruptcy system, and to prevent Debtor from reaping a benefit from his actions to the prejudice of his creditors, the bankruptcy court was justified in deciding that Debtor not receive his homestead exemption under these facts.

Even so, Debtor argues that, based upon the Panel's decisions in his prior appeals, res judicata precluded relitigation of whether Debtor's homestead exemption could be surcharged in the Second Surcharge Motion. While preclusion prevents relitigating the issues of fact or law necessary to support a judgment, preclusive effect should be denied to judgments and orders that are, by their terms, tentative. RESTATEMENT (SECOND) OF JUDGMENTS § 13; Christopher Klein, Lawrence Ponoroff & Sarah Borrey, Principles of Preclusion and Estoppel in Bankruptcy Cases, 79 AM. BANKR. L.J. 839, 854 (2005). Here, the Panel twice stated in its prior decisions the tentative nature of its rulings regarding whether Debtor's homestead exemption could, upon a proper factual showing, be surcharged. In reversing the First Surcharge Motion, the Panel observed that the Trustee "could seek further monetary sanctions, including a surcharge against exemptions." Then, in its decision reversing the bankruptcy court's order denying Debtor's motion for

an order directing Trustee to pay Debtor's homestead exemption, the Panel noted that, even though Debtor "is entitled to his claimed homestead exemption, it still might be subject to surcharge, based on an appropriately supported motion filed by the trustee." Law v. Siegel, BAP no. CC-07-1127, Memorandum at 11-12.

We conclude that the previous decisions of the Panel reversing the bankruptcy court's order on the First Surcharge Motion and the order denying Debtor's motion to pay the claimed homestead exemption were tentative as to the question whether the exemption might be subject to surcharge such that Trustee was not precluded from seeking a surcharge exemption in the Second Surcharge Motion.

II.

The bankruptcy court did not abuse its discretion in compelling Debtor to attend a deposition and imposing discovery sanctions.

Debtor also appeals the bankruptcy court's order compelling him to attend a deposition in connection with the Second Surcharge Motion, and imposing monetary sanctions against him for failure to cooperate in discovery, on several grounds.[8] Debtor first argues that Trustee had ample opportunity to take his deposition years

[8] In addressing Debtor's second issue on appeal, we acknowledge the objection of Trustee that an order concerning discovery is, usually, interlocutory and not appealable. Church of Scientology v. United States, 113 St. Ct. 447, 452 n.11 (1992) The discovery order at issue here, though, and the monetary sanctions imposed on Debtor, were directly related to the Second Surcharge Motion. The bankruptcy court's order granting the Second Surcharge Motion was a final judgment disposing of the dispute between Trustee and Debtor concerning the surcharge of the homestead exemption. An interlocutory order, such as this discovery and sanctions order entered as part of the surcharge motion dispute, merges with the final judgment and may be challenged in an appeal of that judgment. Baldwin v. Redwood City, 540 F.2d 1360, 1364 (9th Cir. 1976).

earlier, such that he should not have been ordered to submit to deposition later. Second, Debtor insists that Trustee's demand that he appear at a deposition and produce documents was intended to harass Debtor. Finally, Debtor contends that production of the documents requested by Trustee would cost $3,000, and Debtor should not be required to provide the documents unless Trustee paid this sum in advance. None of these contentions has merit.

Under the Rules, the Second Surcharge Motion was a contested matter. Rule 9014(a). Rule 9014(c) provides that, unless the bankruptcy court orders otherwise, the discovery procedures set forth in Rules 7028-7037, which effectively incorporate Civil Rules 28-37, are available to the parties in a contested matter. Depositions of parties may be taken without leave of court under Rule 7030 and Civil Rule 30, and the production of documents may be sought under Rule 7034 and Civil Rule 34. See In re Sundridge Assocs., 202 B.R. 761 (E.D. Cal. 1996)(production of documents in connection with a contested matter can be compelled under Rule 7034).

Nothing in the record supports the notion that Trustee, in seeking discovery from Debtor, was motivated by any desire to harass him. Indeed, the Panel's decision regarding the First Surcharge Motion made clear that Trustee would be expected to support any subsequent request for a surcharge of Debtor's exemptions with appropriate and adequate facts and evidence. It appears that Trustee was endeavoring to discover facts relevant to the Second Surcharge Motion.

Moreover, nothing in Rule 7034 requires Debtor to provide the documents demanded by Trustee at Debtor's expense. Instead, the

Rule requires only that the documents be produced by Debtor; it was Trustee's responsibility, if he chose to do so, to reproduce copies of the documents at the expense of the estate.[13]

Lastly, Debtor argues that sanctions should not have been imposed upon him by the bankruptcy court because he agreed in good faith to participate in the deposition. Trustee correctly notes that Civil Rule 37(a)(5)(A), incorporated in Rule 7037, states that if the motion to compel is granted (which occurred here) or if the requested discovery is only provided after the motion to compel is filed (which occurred here) "the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." (Emphasis added.) The record indicates that Trustee complied with the requirements of this rule in that he attempted in good faith to obtain the discovery without judicial intervention. The bankruptcy court provided Debtor an opportunity to be heard on the sanctions motion but Debtor did not attend the hearing.

The sanction imposed by the bankruptcy court of $3,520 was supported and adequately documented by Trustee's declaration of expenses related to the motion to compel. We conclude that the

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[13] "A party may serve on any other party a request within the scope of Rule 26(b): (1) to produce and permit the requesting party to inspect, copy, test or sample . . . items in the responding party's possession, custody or control[.]." Civil Rule 34(a)(1), incorporated in Rule 7034 (emphasis added); Ares-Serono, Inc. v. Organon Int'l, 151 F.R.D. 215, 220 (S.D.N.Y. 1993) (party seeking documents under Civil Rule 34 is responsible for expense of copying).

bankruptcy court did not abuse its discretion in compelling Debtor to attend the deposition and produce documents, and imposing compensatory monetary sanctions for Debtor's failure to comply.

CONCLUSION

We AFFIRM the orders of the bankruptcy court.

MARKELL, Bankruptcy Judge, concurring:

I concur. While there is nothing wrong with the panel's application of Latman v. Burdette, 366 F.3d 774 (9th Cir. 2004), I question whether Latman remains good policy. As an initial matter, since Latman was decided, no other federal appellate court has adopted it. See Scrivner v. Mashburn (In re Scrivner), 535 F.3d 1258, 1263-65 (10th Cir. 2008); Mazon v. Tardif (In re Mazon), 395 B.R. 742, 748-50 (M.D. Fla. 2008) (following Scrivner). A leading treatise has also noted Latman's outlier status. 2 COLLIER ON BANKRUPTCY ¶ 105.02[5][b] at n.130 (Henry J. Sommer & Alan Resnick, eds., 16th ed. 2009).

Further, in 2008, after Latman and Onubah v. Zamora (In re Onubah), 375 B.R. 549 (9th Cir. BAP 2007) were decided, the Federal Rules of Bankruptcy Procedure were amended to address fraudulently asserted exemptions. Rule 4003(b)(2) now allows the bankruptcy trustee to challenge fraudulently asserted exemptions for up to one year after a debtor's case is closed. Fed. R. Bankr. P. 4003(b)(2). As this addition specifically addresses the consequences of fraudulently asserted exemptions, I question whether Latman's reliance on Section 105(a)'s residual equitable

powers can continue to justify imposing a surcharge in the absence of any specific statutory authority.

But Latman still binds. I thus concur in the panel's application of Latman to these facts.

FILED

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: STEPHEN LAW, Debtor,	No. 09-60046 BAP No. 09-1077-PaMkH
STEPHEN LAW, Appellant, v. ALFRED H. SIEGEL, Chapter 7 Trustee, Appellee.	ORDER

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P 35.

Law's petition for rehearing en banc is denied.

No further filings shall be accepted in this closed case.

REPLY BRIEF

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No. 12-5196

IN THE
Supreme Court of the United States

STEPHEN LAW,
Petitioner,

v.

ALFRED SIEGEL, TRUSTEE
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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REPLY BRIEF OF PETITIONER

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INTRODUCTION

In his brief in opposition, the respondent Trustee candidly concedes that the lower courts are split on the question presented by this petition: whether bankruptcy courts have the equitable power to surcharge a debtor's statutorily exempt property. BIO at 10-14. This case presents an excellent vehicle to address this important question, and the Trustee says remarkably little to the contrary. The Trustee properly does not suggest that any vehicle problem hinders this Court's consideration of the petition.[1] Nor does he deny that the issue is a significant one, which it surely is given the substantial and growing number of courts that have had occasion to address it, and the importance of the homestead exemption to individual debtors.

Instead, beyond canvassing the split itself, much of the brief in opposition is devoted simply to arguing the merits of why the Trustee believes that the Ninth Circuit has adopted the correct rule. BIO at 14-16. As discussed herein, the Trustee is incorrect that the Ninth Circuit's broad bestowal of equitable powers upon bankruptcy judges is consistent with the enumerated and limited powers the Bankruptcy Code provides. But the more important point is that the issue is one of real and important disagreement in the lower courts. Had Petitioner declared

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[1] The Trustee does state that he has "been advised" that a petition for certiorari has been filed from the First Circuit's decision in *Malley v. Agin*, 693 F.3d 28 (1st Cir. 2012), which also presents the question of whether equitable surcharge is permitted. BIO at 13 n.7. The First Circuit's decision issued on August 15, 2012, and no petition for rehearing was filed. Accordingly, absent extension, any petition to this Court from that case would have been due on or before November 13, 2012. A search of this Court's electronic docket does not reveal that any such petition or extension application has been filed.

bankruptcy a few hundred miles to the east in Utah, or in any number of other jurisdictions, he would have been entitled to his homestead exemption. Instead, Petitioner's bankruptcy happened to take place in California, which permits bankruptcy judges to surcharge the exemption. Only this Court can resolve this near decade-old disparity, and it should take the opportunity that is cleanly presented by this petition to do so.[2]

REASONS WHY THE PETITION SHOULD BE GRANTED

I. There Is A Substantial And Growing Split Among The Federal Circuits And Lower Courts Over The Important Question Of The Equitable Power Of Bankruptcy Courts And The Proper Interpretation Of The Bankruptcy Code.

As the Trustee concedes, the lower federal courts are in open disagreement as to whether bankruptcy courts may invoke equitable powers to surcharge exempt assets notwithstanding specific provisions of the Bankruptcy Code. But the Trustee's presentation does not capture the full depth and breadth of that split. On one side of the split are the First and the Ninth Circuits, which have held that the language of 11 U.S.C. § 105(a) is a broad grant of equitable authority to bankruptcy courts that permits them to surcharge otherwise exempt assets. On the other side of the split are the Seventh, Tenth, and Eleventh Circuits, which have construed

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[2] The Petition in this case presented an additional and independent question dealing with the preclusive effect of the Bankruptcy Appellate Panel's earlier determination that Petitioner was not subject to an equitable surcharge. Petition at 15-17. With the benefit of counsel, Petitioner respectfully withdraws that question and asks that this Court solely consider the Petitioner's remaining question of whether a bankruptcy court may equitably surcharge exempted property where the statutorily enumerated grounds permitting surcharge are not satisfied.

the bankruptcy court's equitable powers much more narrowly under 11 U.S.C. § 105(a).

The split among the circuits has been percolating for the better part of a decade now. In the decision below, the Ninth Circuit panel followed the Ninth Circuit's 2004 decision in *Latman v. Burdette*, 366 F.3d 774, 786 (9th Cir. 2004), in construing 11 U.S.C. § 105(a) to confer upon bankruptcy courts a broad equitable power to surcharge a debtor's exempt assets. In *Latman*, the Ninth Circuit held that "the bankruptcy court may equitably surcharge a debtor's statutory exemptions when reasonably necessary both to protect the integrity of the bankruptcy process and to ensure that a debtor exempts an amount no greater than what is permitted by the exemption scheme of the Bankruptcy Code." *Latman*, 366 F.3d at 786.

Since that time, several other Circuits have disagreed with this interpretation of the bankruptcy court's equitable powers. In *Scrivner v. Mashburn* (*In re Scrivner*), 535 F.3d 1258, 1265 (10th Cir. 2008), the Tenth Circuit took a much narrower view and read the Bankruptcy Code's provisions as prohibiting the court from taking any action not expressly authorized by the Code. As the *Scrivner* Court held: "[B]ecause the surcharge of exempt property is inconsistent with the Code's provisions . . . . We therefore hold that the bankruptcy court exceeded its equitable authority under § 105(a) in authorizing the surcharge of the debtor's exempt assets." *Id.* Likewise, although they have not addressed the specific question of surcharging exemptions, the Eleventh and Seventh Circuits have both broadly held that a bankruptcy court's equitable powers are limited to enforcing

affirmative provisions of the Code, a view that district courts in those Circuits have recognized forecloses a court from equitably surcharging an exemption. *See Mazon v. Tardif (In re Mazon)*, 395 B.R. 742, 749-50 (M.D. Fla. 2008) (holding that "[l]ike *Scrivner*, the Eleventh Circuit has held that a bankruptcy court's equitable powers under § 105(a) do not allow it to override a specific provision of the Bankruptcy Code." (citing *In re Cox*, 338 F.3d 1238, 1243 (11th Cir. 2003)); *see also Grochocinski v. Campbell (In re Campbell)*, 475 B.R. 622, 641 (Bankr. N.D. Ill. 2012) ("Because the Seventh Circuit has ruled that § 105(a) can only be used to enforce substantive rights provided elsewhere by the Bankruptcy Code, and the Trustee has not pointed to any other provision of the Code for the right to surcharge exempt property, the Court [finds that no such authority exists].") (citing *In re UAL Corp.*, 412 F.3d 775, 778 (7th Cir. 2005)); *In re Kmart Corp.*, 359 F.3d 866, 871 (7th Cir. 2004) ("[T]he fact that a [bankruptcy] proceeding is equitable does not give the judge a free-floating discretion to redistribute rights in accordance with his personal views of justice and fairness, however enlightened those views may be." (quotation marks omitted)); *see also In re Timmons*, No. 11-20513-7, 2012 WL 4435522, at *5 (Bankr. D. Kan. Sept. 24 2012); *In re Dunn*, No. 05-09708-8-JRL, 2010 WL 2721201, at *2 (Bankr. E.D.N.C. July 7, 2010) ("The court would be inclined to surcharge the exempt asset . . . but the majority construction . . . does not permit [such surcharging] under circumstances other than those provided by the Code." (citing *Scrivner*)).

Thus, while the weight of authority appeared to be trending away from the Ninth Circuit's original decision in *Latman v. Burdette*, in a very recent decision, the First Circuit held that it would "endorse the Ninth Circuit's conclusion in *Latman v. Burdette*, 366 F.3d 774 (9th Cir. 2004)." *Malley v. Agin*, 693 F.3d 28, 30 (1st Cir. 2012). In an opinion authored by Justice Souter sitting by designation, the First Circuit noted that there was a split among the circuits and that "the Supreme Court ha[d] yet to consider today's issue." *Id.* While Justice Souter looked to this Court's decision in *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007), to support his decision, he noted that this Court in *Marrama* did not address the particular issue that arose here.

Absent guidance from this Court, this deep and intractable split over the bankruptcy courts' equitable powers to surcharge exempt property will continue to divide the lower courts. Indeed, it is not just the circuits that are divided, but also the bankruptcy courts themselves. *Compare Dunn*, 2010 WL 2721201, at *2 (adopting the Tenth Circuit's view); *In re Vaughn*, No. 08-64060-MGD, 2008 WL 7880893, at *4 (Bankr. N.D. Ga. Nov. 25, 2008) (same) *with Bierbach v. Brooks* (*In re Brooks*), 393 B.R. 80, 86 (Bankr. M.D. Pa. 2008) (adopting the Ninth Circuit's view); *In re Price*, 384 B.R. 407, 411 (Bankr. E.D. Va. 2008) (same); *Rice v. Johnson* (*In re Johnson*), 371 B.R. 380, 391 (Bankr. E.D. Ark. 2007) (same). This Court's review is therefore urgently needed as debtors will be subjected to a different rule depending simply upon the court in which they are required to file.

That is particularly true because, as this Court has observed, "[u]nlike the Commerce Clause, the Bankruptcy Clause itself contains an affirmative limitation or restriction upon Congress' power: bankruptcy laws must be uniform throughout the United States." *Railway Labor Executives' Ass'n v. Gibbons*, 455 U.S. 457, 468 (1982); *see also In re Reese*, 91 F.3d 37, 39 (7th Cir. 1996) (Posner, J.) ("[T]he uniformity clause . . . forbids . . . arbitrary regional differences in the provisions of the Bankruptcy Code."). While this Court ordinarily intervenes to ensure uniform enforcement of federal laws, *see, e.g., McKesson Corp. v. Division of Alcoholic Beverages & Tobacco, Deptartment of Business Regulation of Florida*, 496 U.S. 18, 29 n.12 (1990), that responsibility is particularly heightened where the Constitution itself requires uniformity.

II. The Ninth Circuit's Decision Is On The Wrong Side Of The Split In Authority Because It Contravenes The Clear Language Of The Bankruptcy Code.

The split of authority in the lower courts is reason alone to warrant review by this Court, but review is also warranted because the decision below is incorrect and consequential. The Ninth Circuit's rule reads 11 U.S.C. § 105(a) as granting bankruptcy courts a free-floating equitable authority, untethered to the enforcement of any particular provision of the Bankruptcy Code. That interpretation upsets the carefully calibrated statute that Congress enacted and cannot be reconciled with either the text or the purpose of the statute.

Exemptions, like the homestead exemption at issue here, are specifically carved out by the Bankruptcy Code. *See* 11 U.S.C. § 522(b); Fed. R. Bankr. P. 4003. The point of those exemptions is to exclude certain assets as exempt from

administration by the bankruptcy trustee. *See Schwab v. Reilly*, 130 S. Ct. 2652, 2657 (2010); *Burlingham v. Crouse*, 228 U.S. 459, 473 (1913) ("It is the twofold purpose of the bankruptcy act to convert the estate of the bankrupt into cash and distribute it among creditors, and then to give the bankrupt a fresh start with such exemptions and rights as the statute left untouched."). At the same time, Congress has also set out a variety of circumstances in which an otherwise exempt asset may be liable for debts of the debtor. *See* 11 U.S.C. § 522(c). Such circumstances include the failure to report prepetition proceeds from the sale of a house or the failure to comply with an order to turnover such funds. *Id.*

Had Congress wanted to permit bankruptcy courts to impose a surcharge on exempt assets as a means of addressing fraudulent behavior or other bad faith conduct by debtors, Congress could easily have done so, but it did not. Yet the Ninth Circuit's rule ignores those legislative choices about the circumstances in which exemptions are allowed in favor giving courts the equitable power to create other, non-enumerated exceptions to the exemption as they see fit. That cannot be correct. As the Tenth Circuit observed in *Scrivner*, "[T]o allow the bankruptcy court, through principles of equity, to grant any more or less than what the clear language of [a statute] mandates would be tantamount to judicial legislation and is something that should be left to Congress, not the courts." *Scrivner*, 535 F.3d at 1263 (quotation marks omitted). Instead, "[b]ecause the Code contains explicit exceptions to the general rule placing exempt property beyond the reach of the estate, we may not read additional exceptions into the statute." *Id.* at 1264.

This is particularly so given that after the Ninth Circuit approved of equity surcharges in the 2004 *Latman* decision, Congress amended the Bankruptcy Code to create more *enumerated* circumstances in which an exemption could be surcharged due to bad acts by the debtor, but it did not opt to surcharge a debtor's exempt assets as a remedy for the failure to disclose assets, turn over property or obey a court order. *See* 11 U.S.C. § 522(q), *as amended by* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (allowing surcharge where, among other things, the debt in question stemmed from security fraud or an intentional tort causing death). The inference is clear: Congress has expressly articulated and has continued to adjust the circumstances in which an exemption may be surcharged. Those careful legislative choices would be superfluous if courts could make an end-run around them by invoking an equitable power to surcharge in any other circumstances they deemed appropriate.

The Trustee also relies heavily on First Circuit's reasoning in *Malley*, BIO at 13-14, but that too is unpersuasive. In *Malley*, the First Circuit highlighted the second sentence of § 105(a) in affirming the bankruptcy court's equitable authority to surcharge on exempt property. 693 F.3d at 30. In its entirety, § 105(a) provides:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

The First Circuit contended that the second sentence of this provision dealing with the Court's authority to take action *sua sponte* does more than merely clarify that a bankruptcy court need not wait for a motion by a party to take action. *Malley*, 693 F.3d at 30. Instead, the First Circuit read the provision as effectively authorizing any equitable action by the bankruptcy court that the court deemed appropriate. But that reading not only makes superfluous the enumerated bases for surcharges discussed above, it also makes superfluous the first sentence of § 105(a). There would be no point in stating that a bankruptcy court had the equitable authority to "*carry out* the provisions of this title," if in the next sentence of the provision Congress was granting the equitable authority to take action regardless whether it was inconsistent with the provisions of the title (e.g., such as ordering a surcharge on grounds not enumerated).

Finally, the Trustee contends that its interpretation is necessary to do justice. BIO at 14-15. Leaving aside the fact that Congress has expressly set out the circumstances where it believes that justice requires the imposition of a surcharge, the Trustee is too quick dismiss the panoply of tools that a bankruptcy court has its disposal to combat fraud. The threat of dismissal under 11 U.S.C. § 507 or outright denial of discharge under 11 U.S.C. § 727 provide a serious disincentive to debtors to engage in fraudulent acts. Accordingly, this Court ought to grant certiorari to confirm that the specific remedies authorized by Congress, and not those supplemented by the Ninth Circuit, are the ones available to bankruptcy courts and litigants.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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November 29, 2012

AMICUS CURIAE BRIEF

No. 12-5196

In the Supreme Court of the United States

STEPHEN LAW, PETITIONER

v.

ALFRED H. SIEGEL, CHAPTER 7 TRUSTEE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether, pursuant either to its authority under 11 U.S.C. 105(a) or to its inherent power to sanction misconduct, a bankruptcy court may impose an equitable surcharge on a debtor's otherwise-exempt property in order to compensate the estate for litigation costs that it incurred as a result of the debtor's bad-faith litigation conduct.

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In the Supreme Court of the United States

No. 12-5196

STEPHEN LAW, PETITIONER

v.

ALFRED H. SIEGEL, CHAPTER 7 TRUSTEE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to this Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

STATEMENT

1. a. A debtor commences a voluntary bankruptcy case by filing a petition in bankruptcy court. 11 U.S.C. 301. Individual debtors typically file for relief under Chapter 7 or Chapter 13 of the Bankruptcy Code. The present case arises under Chapter 7, which provides for a liquidation of a debtor's non-exempt pre-petition assets in exchange for a discharge of debts. 11 U.S.C. 701 *et seq.* After filing a voluntary bankruptcy petition, a debtor must file a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs. 11 U.S.C. 521(a)(1); Fed. R. Bankr. P. 1007(c); Fed. R.

Bankr. P. Official Forms 6 (Schedules) and 7 (Statement of Financial Affairs)). A debtor must file those documents under penalty of perjury. See Fed. R. Bankr. P. 1008.

Commencement of a Chapter 7 case creates an "estate" that includes all of the debtor's "legal or equitable interests * * * in property as of the commencement of the case." 11 U.S.C. 541(a). The debtor must surrender all non-exempt estate property to the Chapter 7 trustee, who takes custody of such property, liquidates it, and disburses the proceeds to creditors in accordance with their rights and priorities under the Code. 11 U.S.C. 507, 521(a)(3) and (4), 704(a)(1), 726. The Bankruptcy Code accords a high priority to paying administrative expenses incurred by the estate. 11 U.S.C. 507(a)(2); see 11 U.S.C. 503(b) (administrative expenses include "the actual, necessary costs and expenses of preserving the estate").

The Bankruptcy Code "give[s] the bankrupt a fresh start with such exemptions and rights as the [bankruptcy] statute left untouched." *Burlingham* v. *Crouse*, 228 U.S. 459, 473 (1913). A debtor is entitled to claim various statutory exemptions to prevent the liquidation or distribution of specific categories of property. 11 U.S.C. 522. Generally speaking, "property exempted" from the estate "is not liable during or after the case for any debt of the debtor that arose * * * before the commencement of the case." 11 U.S.C. 522(c).

Exemptions may be defined by state or federal law. See 11 U.S.C. 522(b)(1) and (2), (d). The State of California (where this bankruptcy was filed) requires debtors in California to use the exemptions defined by state law. See Cal. Civ. Proc. Code §§ 703.130, 703.140 (West Supp. 2013). As relevant here, California currently

provides for a "homestead" exemption of between $75,000 and $175,000 (depending on the debtor's household circumstances) for a debtor's interest in his principal dwelling. See *id.* §§ 704.710(c), 704.730. When a debtor claims eligible property as exempt and no "party in interest" objects, the federal Bankruptcy Code ordinarily excludes such property from the bankruptcy estate. See 11 U.S.C. 522(*l*).

b. Section 105 of the Bankruptcy Code, 11 U.S.C. 105, sets forth the powers of courts adjudicating bankruptcy cases. As relevant here, Section 105(a) provides that the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" Title 11 of the United States Code. 11 U.S.C. 105(a). Section 105(a) further provides that "[n]o provision" of Title 11 "providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." *Ibid.*

2. In January 2004, petitioner filed a voluntary Chapter 7 bankruptcy petition. Pet. App. 5. Respondent was appointed to serve as Chapter 7 Trustee. *Ibid.*

a. Petitioner's bankruptcy schedules listed petitioner's home as the sole asset of the bankruptcy estate. Pet. App. 5. The schedules represented that the home was worth $363,348 and that it was encumbered by two liens totaling $304,085.56. *Id.* at 6. Petitioner listed a first priority mortgage lien for $147,156.52, held by Washington Mutual Bank, and a second priority lien for $156,929.04, held by "Lin's Mortgage and Associates." *Ibid.* Petitioner also claimed a homestead exemption of $75,000 pursuant to Cal. Civ. Proc. Code § 704.730(a)(2).

Pet. App. 6. Petitioner's schedules thus represented that the total amount of the claimed homestead exemption plus the two listed liens exceeded the value of the house. The practical implication of those figures was that the home was not a source of value that the bankruptcy estate could use to satisfy petitioner's other creditors.

Petitioner's homestead exemption became final without opposition from respondent. Pet. App. 9. Years of litigation ensued, however, concerning the validity of the second lien and associated deed of trust. See 401 B.R. 449-455. Petitioner offered unpersuasive and contradictory evidence in support of his claim that in 1998 he had received a loan of $168,000 from a woman named Lili Lin. *Id.* at 449-450. He could not produce evidence to establish the form in which he had received the money, and he offered shifting accounts of how and to whom those funds were paid. *Ibid.* Petitioner contended that in June 1999 (a year after he had allegedly received the loan) he had executed and obtained notarization of two separate promissory notes in favor of a person named Lili Lin to document the alleged loan. *Id.* at 450. The two notes were inconsistent with each other, however, and petitioner could not explain why. *Ibid.* Petitioner recorded a deed of trust in favor of Lili Lin on June 28, 1999—after an action had been commenced against petitioner in Los Angeles Superior Court, and four months before that action resulted in a judgment of $131,821.74 against petitioner. *Ibid.*

Petitioner was acquainted with a woman named Lili Lin, who lived in Artesia, California. 401 B.R. 450. Although she had never loaned any money to petitioner, petitioner delivered to her the deed of trust and promissory note in June 1999. *Ibid.* Petitioner later asked Lin

to accept a check from him for $168,000 in satisfaction of the loan, and then to return the money to him. *Id.* at 450-451. Lin refused. *Id.* at 451. In early 2000, County Records Research received a letter purporting to be from Lin and seeking to institute foreclosure proceedings on petitioner's home. *Ibid.* Lin stated that she had not sent that letter. *Ibid.* Around the same time, Lin received a packet of documents that, had she signed them, would have transferred any interest she had in the disputed second lien to petitioner's ex-wife. *Ibid.* Lin declined to sign the documents and later entered into a stipulated judgment with respondent, in which Lin stated that she had never loaned money to petitioner and that petitioner had attempted to involve her in a sham foreclosure of the disputed deed of trust. *Id.* at 451-452.

When petitioner filed his bankruptcy petition four years later, he listed "Lin's Mortgage & Associates," purportedly located in Guangzhou, China, as the holder of the second lien on his residence. 401 B.R. 451. Respondent filed an adversary proceeding asserting fraud against Lili Lin. *Ibid.* In his opposition, petitioner alleged that he had received the second-lien loan from a *different* woman named Lili Lin who resided in China. *Ibid.* Although Lin of China purportedly never traveled to the United States during the pendency of the bankruptcy, did not speak English, and was often unrepresented by counsel, numerous pleadings in the bankruptcy court advocating for petitioner's position were filed in her name. *Id.* at 452-453. The bankruptcy court ultimately concluded that no person named Lili Lin—either from Artesia or from China—had ever loaned money to petitioner in exchange for the disputed deed of trust. *Id.* at 453.

Respondent's investigation into the validity of the scheduled second lien—and petitioner's resistance to the investigation—spawned years of litigation, including discovery disputes, more than a dozen appeals to the Bankruptcy Appellate Panel (BAP), and several appeals to the Ninth Circuit. Pet. App. 5 n.4. With permission from the bankruptcy court, respondent ultimately sold petitioner's residence. *Id.* at 6 & n.5. After paying all costs of the sale and satisfying the (undisputed) first lien, the bankruptcy estate was left with $208,777.91. *Id.* at 6 n.5. That amount would have been sufficient to pay petitioner's creditors, to pay respondent's costs, and to pay petitioner the $75,000 value of his homestead exemption if petitioner had not invented the false second lien. *Id.* at 13. As a result of the litigation surrounding that fictitious lien, however, respondent and the estate had incurred more than $450,000 in legal fees. *Ibid.*

In 2005 (during the dispute about the validity of the second lien), the bankruptcy court entered a default judgment against petitioner denying discharge of his debts in bankruptcy. No. CC-05-1352, 2006 WL 6810957, at *2. Petitioner appealed the denial of discharge, and the BAP affirmed. *Id.* at *3-*4.

b. When respondent moved to sell petitioner's house in 2006, he also filed a motion to "surcharge" petitioner's $75,000 homestead exemption in order to recoup some of the expenses the estate had incurred in resisting petitioner's attempt to shield equity in his home with the fraudulent second lien. Pet. App. 6. The bankruptcy court authorized the surcharge, explaining that petitioner's conduct was "the direct cause of the expenses that have been incurred by [respondent]," and that respondent was likely to incur additional related expenses. *Id.* at 7.

Petitioner appealed, and the BAP reversed. See Pet. App. 7. The BAP acknowledged that petitioner had exhibited "misconduct, obstinance, blatant ignorance of court orders and directives, animosity towards the court and the trustee, and efforts to thwart administration of the [bankruptcy] case." No. CC-06-1180, at 17. The BAP reversed, however, because the surcharge was based on the disputed validity of the second lien, which at that point had not yet been determined. *Ibid.*

c. In April 2008, respondent filed a second motion to surcharge petitioner's homestead exemption. Respondent therein alleged that petitioner had used the fictitious second lien to attempt to defraud his creditors; that petitioner had twice perjured himself, first by listing the fraudulent lien in his schedules and then by attaching a fraudulent promissory note to his motion to reconsider the order approving the sale of his residence; and that petitioner had invented Lili Lin of China in order to frustrate respondent's administration of the estate and to exhaust the estate's assets. See Pet. App. 9-10. The bankruptcy court conducted an evidentiary hearing on the motion and memorialized its findings in a written memorandum decision. See *id.* at 11.

The bankruptcy court found that petitioner had attempted to perpetrate a fraud on the court by claiming the second lien on his residence. See Pet. App. 11-13. The court concluded that "[t]he preponderance of the evidence clearly shows that the loan was a fiction, meant to preserve [petitioner's] equity in his residence beyond what he was entitled to exempt as a homeowner, and a fraud on his creditors and the court." *Id.* at 12; see generally 401 B.R. 453. The bankruptcy court further found that, "had [petitioner] not invented the second deed of trust and persisted in his misrepresentations to

the court, ample funds would have been available in the bankruptcy case to pay [petitioner's] creditors and [respondent's] costs, pay [petitioner] his full homestead exemption, and to return surplus funds to [petitioner]." Pet. App. 13. During the extensive litigation over the fraudulent second lien, however, the bankruptcy estate had incurred more than $450,000 in expenses as a "direct result of [petitioner's] active misrepresentations to [respondent] and to the court." *Ibid.* Recognizing that "the actual costs" of petitioner's misconduct "to the estate far exceed $75,000 (the exemption to which [petitioner] would otherwise be entitled)," the bankruptcy court granted respondent's motion to surcharge petitioner's homestead exemption in its entirety. *Ibid.* The practical effect of the surcharge was to deny petitioner the $75,000 portion of the residence-sale proceeds to which he would otherwise have been entitled under the California homestead exemption.

d. Petitioner appealed to the BAP, which affirmed in an unpublished decision. Pet. App. 4-26. The BAP observed that, although "[t]he Bankruptcy Code does not expressly authorize surcharges against a debtor's exemptions," the Ninth Circuit had previously "held that a bankruptcy court may equitably surcharge a debtor's statutory exemptions when reasonably necessary to protect the integrity of the bankruptcy process and to ensure that a debtor receives as exempt property an amount no more than what is permitted by the Bankruptcy Code." *Id.* at 15 (citing *Latman* v. *Burdette*, 366 F.3d 774, 786 (9th Cir. 2004)). The BAP also relied on a previous BAP decision upholding a bankruptcy court's surcharge of a debtor's homestead exemption to reimburse the estate for expenses incurred as a result of the debtor's misconduct. *Id.* at 16-17 (citing *In re Onubah*,

375 B.R. 549, 553-558 (B.A.P. 9th Cir. 2007)). The BAP had held in that decision that such a surcharge is permitted when a debtor has "abused the processes of the bankruptcy court" or when a debtor's "efforts at obstruction were not litigation tactics undertaken in good faith." *Id.* at 17 (quoting *In re Onubah*, 375 B.R. at 554).

While recognizing "that a surcharge of a debtor's exemptions is appropriate only in 'exceptional circumstances,'" the BAP concluded that such circumstances "exist when a debtor engages in inequitable or fraudulent conduct that, when left unchallenged, denies creditors access to property in excess of that which is properly exempted under the Bankruptcy Code." Pet. App. 17-18 (quoting *Latman*, 366 F.3d at 786). The BAP held that the surcharge against petitioner's homestead exemption was not an abuse of discretion because the "second trust deed loan was a fiction" and a fraud on the court. *Id.* at 21. The surcharge was justified, the BAP explained, to "protect the integrity of the bankruptcy system, and to prevent [petitioner] from reaping a benefit from his actions to the prejudice of his creditors." *Id.* at 18-21.

e. The court of appeals affirmed in an unpublished decision. Pet. App. 1-3. The court explained that "[t]he BAP properly affirmed the bankruptcy court's order granting [respondent's] surcharge motion because the surcharge was calculated to compensate the estate for the actual monetary costs imposed by [petitioner's] misconduct, and was warranted to protect the integrity of the bankruptcy process." *Id.* at 2 (citing *Latman* and *Onubah*).

DISCUSSION

Petitioner asks this Court to resolve a division among three courts of appeals concerning a bankruptcy court's

authority to impose an "equitable surcharge" on a debtor's exempt property. In the prior cases that created the circuit conflict, the surcharge was used to make available for distribution to creditors other property that the debtor should have turned over to the estate but did not. The question whether an equitable surcharge may be used for that purpose might warrant this Court's review in an appropriate case. That issue, however, is not presented here.

Rather, this case presents the distinct question whether the bankruptcy court could properly withhold from the debtor the amount ($75,000) of his state-law homestead exemption as a sanction for the debtor's vexatious and bad-faith litigation conduct, which constituted a fraud on the court and caused the estate to incur substantial litigation expenses it would not otherwise have borne. Petitioner does not identify any circuit split on that question, and bankruptcy courts (like other courts) have inherent authority to impose monetary sanctions on persons who engage in fraudulent or abusive litigation conduct. The petition for a writ of certiorari should be denied.

A. Review Is Not Warranted Because This Case Does Not Present The Question On Which Courts Of Appeals Are Divided

1. The equitable powers of bankruptcy courts are codified in 11 U.S.C. 105(a), which provides:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [Title 11 of the United States Code]. No provision of [Title 11] providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or

> making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

See *Malley* v. *Agin*, 693 F.3d 28, 29 (1st Cir. 2012) (Souter, J.); *In re Scrivner*, 535 F.3d 1258, 1262-1263 (10th Cir. 2008), cert. denied, 556 U.S. 1126 (2009). Section 105(a) thus makes clear that a bankruptcy court may exercise its equitable authority either "to carry out the provisions of" the Bankruptcy Code or to vindicate the court's own authority, including by "prevent[ing] an abuse of process." 11 U.S.C. 105(a). Although Section 105(a) does not authorize bankruptcy courts to take action that contravenes other provisions of the Bankruptcy Code, see *SEC* v. *United States Realty & Improvement Co.*, 310 U.S. 434, 455 (1940), it is a "spacious[]" grant of authority intended to safeguard the bankruptcy system, *Malley*, 693 F.3d at 30.

Three courts of appeals have considered whether a bankruptcy court may equitably surcharge—*i.e.*, treat as non-exempt—a debtor's otherwise-exempt property when the debtor wrongfully withholds non-exempt property from the estate. As used in that context, an equitable surcharge provides additional funds for distribution to creditors, thus compensating the creditors for the loss they would otherwise incur from the debtor's wrongful withholding of non-exempt property, and prevents the debtor from retaining more property than is authorized by the Code. Two of the three courts of appeals to consider the question have held that an equitable surcharge may permissibly be used for that purpose.

Most recently, the First Circuit held in *Malley* (per Justice Souter, sitting by designation) that Section 105(a) authorizes such a surcharge. 693 F.3d at 29-31. The court in *Malley* reasoned that, in enacting Section

105(a), "Congress intended bankruptcy courts to be able to enforce the 'provisions' requiring honest disclosure on the part of the debtor, *see* [11 U.S.C.] 521, and placing limits on exemption claims, *see* [11 U.S.C.] 522." *Id.* at 29. The court further explained that, when a debtor has wrongfully concealed or withheld non-exempt property that can no longer be turned over to the estate (because, for example, the debtor has sold the property and/or spent the money), "surcharge is an appropriate and necessary way to vindicate § 521, requiring honest disclosure of non-exempt assets, and § 522, regulating the determination of legitimate exemptions for the debtor's benefit." *Id.* at 30. The First Circuit concluded that imposing "an offsetting surcharge against otherwise exempt property interests" in such a case "is reasonably necessary 'both to protect the integrity of the bankruptcy process and to ensure that a debtor exempts an amount no greater than . . . the Bankruptcy Code [permits].'" *Ibid.* (quoting *Latman* v. *Burdette*, 366 F.3d 774, 786 (9th Cir. 2004)) (brackets in original). The *Malley* court also noted that such a surcharge implements the bankruptcy court's Section 105(a) authority to "prevent an abuse of process" because it "mitigate[es] the effect of fraud in retaining non-exempt assets and thus enhancing the set-aside for a fresh start beyond the amount Congress provided for the honest debtor." *Ibid.* (quoting 11 U.S.C. 105(a)).

The Ninth Circuit has likewise held that a bankruptcy court may impose an equitable surcharge on otherwise-exempt property of debtors who have attempted to "pocket[] funds that belonged to creditors, by sheltering more assets than permitted by the exemption scheme of the Bankruptcy Code." *Latman*, 366 F.3d at 783, 785-786. Although the court in *Latman* did not cite Section

105(a), it held that "the equitable powers of the bankruptcy court" authorized it to surcharge otherwise-exempt property in order to "prevent[] what would otherwise have been a fraud on the bankruptcy court and the [debtors'] creditors caused by the [debtors'] nondisclosure of monies that should have been listed on the bankruptcy schedules and available for the [debtors'] creditors." *Id.* at 784-785. Such a surcharge, the court reasoned, served to enforce the limitations set forth in 11 U.S.C. 522 on the amount of property a debtor is entitled to shelter during the bankruptcy process. *Id.* at 785.

The Tenth Circuit has reached a different result, holding in *Scrivner*, *supra*, that Section 105(a) does not authorize a bankruptcy court to surcharge debtors' exempt property as a remedy for the debtors' withholding of non-exempt property from the estate. 535 F.3d at 1263-1265. The court in *Scrivner* recognized that Section 105(a) codifies a bankruptcy court's equitable powers, including "the power to 'sanction conduct abusive of the judicial process.'" *Id.* at 1263 (quoting *In re Courtesy Inns, Ltd.*, 40 F.3d 1084, 1089 (10th Cir. 1994)). The court held, however, that those equitable powers did not authorize the equitable surcharge imposed by the bankruptcy court in that case. *Id.* at 1264-1265. The court explained that the Bankruptcy Code includes specific provisions establishing penalties for debtor misconduct and identifying circumstances in which normally exempt property should be treated as non-exempt. *Id.* at 1264. The court concluded that, where those specific provisions are inapplicable, Section 105(a) does not authorize courts to address debtor misconduct by denying exemp-

tions to which the debtor would otherwise be entitled. *Id.* at 1265.[1]

2. In the view of the United States, the courts of appeals in *Malley* and *Latman* correctly held that a bankruptcy court may impose an equitable surcharge on a debtor's otherwise-exempt property as a remedy for the debtor's wrongful withholding of non-exempt property from the estate. Section 105(a) authorizes a bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. 105(a). In *Malley*, *Latman*, and *Scrivner*, the bankruptcy courts issued surcharge orders because recovering the debtors' otherwise-exempt property was necessary to effectuate the provisions of the Code that require debtors to honestly disclose and turn over non-exempt property. See 11 U.S.C. 521, 522. As the court in *Malley* explained, "[i]f § 105(a) was not meant to empower a court to issue" such an order, "it is hard to see what use Congress had in mind for it." 693 F.3d at 30.

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[1] Petitioner suggests that the division among the courts of appeals is more extensive than it is by relying on decisions from a district court in the Eleventh Circuit and a bankruptcy court in the Seventh Circuit. Pet. Reply Br. 3-4 (quoting *In re Mazon*, 395 B.R. 742, 749-750 (M.D. Fla. 2008); *In re Campbell*, 475 B.R. 622, 641 (Bankr. N.D. Ill. 2012)). As those decisions suggest, the Seventh Circuit has described Section 105(a) as a "means to enforce the Code rather than an independent source of substantive authority," *In re UAL Corp.*, 412 F.3d 775, 778 (2005), and the Eleventh Circuit has noted that "[t]he bankruptcy court's equitable powers * * * do not allow it to override the specific statutory language found in" another provision of the Code, *In re Cox*, 338 F.3d 1238, 1243 (2003), cert. denied, 541 U.S. 991 (2004). Neither the Seventh nor the Eleventh Circuit, however, has considered whether or in what circumstances Section 105(a) authorizes a bankruptcy court to impose a surcharge on otherwise-exempt property.

The Tenth Circuit concluded in *Scrimer* that, at least when some provision of the Code addresses the conduct at issue, Section 105(a) does not empower a bankruptcy court to take any action not specifically authorized by the Code. 535 F.3d at 1265. That reading, however, would render largely superfluous Section 105(a)'s general authorization to issue orders "necessary or appropriate to carry out the provisions of the" Code. 11 U.S.C. 105(a). When a debtor's breach of Code requirements would otherwise leave him with a larger amount of property than the Code authorizes him to retain, thereby leaving his creditors with a correspondingly smaller share of the debtor's assets, a bankruptcy court may appropriately take steps to recover otherwise-exempt property in order to ensure that both the debtor and the creditors ultimately receive the amounts to which they are entitled under the applicable Code provisions. In such a case, the surcharged property should not be "recognized as 'exempted under [Section 522]' when its exemption would consummate a fraud on creditors by giving the debtor a greater exemption in fact than the code entitles him to claim in law." *Malley*, 693 F.3d at 29.[2]

The First and Ninth Circuits' understanding of bankruptcy courts' remedial authority under Section 105(a) is consistent with this Court's decision in *Marrama* v.

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[2] Such steps are equally justified by Section 105(a)'s authorization of bankruptcy courts to "tak[e] any action or mak[e] any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. 105(a). As the First Circuit explained: "There could not be a clearer example of foiling abuse of process than a surcharge order mitigating the effect of fraud in retaining non-exempt assets and thus enhancing the set-aside for a fresh start beyond the amount Congress provided for the honest debtor." *Malley*, 693 F.3d at 30.

Citizens Bank, 549 U.S. 365 (2007). In *Marrama*, the bankruptcy court denied a Chapter 7 debtor's motion to convert his case to a Chapter 13 bankruptcy even though 11 U.S.C. 706(a) provides that a Chapter 7 "debtor may convert a case under [Chapter 7] to a case under chapter 11, 12, or 13 [of Title 11] at any time." See *Marrama*, 549 U.S. at 368-371. This Court upheld the bankruptcy court's action, reasoning that "the broad authority granted to bankruptcy judges to take any action that is necessary or appropriate 'to prevent an abuse of process' described in § 105(a) of the Code, is surely adequate to authorize an immediate denial of a motion to convert filed under § 706." *Id.* at 375. The reasoning of *Marrama* strongly suggests that *Malley* and *Latman*, rather than *Scrivner*, reflect the better understanding of bankruptcy courts' authority under Section 105(a) to surcharge a debtor's otherwise-exempt property in order to return wrongfully withheld assets to the bankruptcy estate for distribution to creditors.

3. Although the circuit conflict described above is relatively shallow, the Court may wish to resolve that division in an appropriate case. This is not an appropriate case in which to do so, however, because the surcharge at issue here was premised on a different form of debtor misconduct, and served a different purpose, than the surcharges ordered in *Malley*, *Scrivner*, and *Latman*. In this case, petitioner's creditors were paid in full from the concededly non-exempt portion of the proceeds that the sale of his residence produced. See Pet. App. 6 n.5 (secured first lien on residence satisfied); 2:04-bk-10052-TD, Docket entry No. 354 (ordering respondent to disburse estate funds to satisfy petitioner's other major creditor). Unlike in the prior cases discussed above, petitioner did not squander or ultimately

withhold non-exempt assets from the estate, and the bankruptcy court's surcharge of petitioner's homestead exemption was not intended to restore to the estate property that petitioner should have handed over as part of the bankruptcy process. To be sure, petitioner *attempted* through the fictitious lien to retain more assets than the Code (and the applicable state-law homestead exemption) would allow. But when that fraud was discovered and respondent sold petitioner's residence (with permission from the bankruptcy court), he obtained for the estate all of the property that the Code required petitioner to turn over as an initial matter.

Here, the bankruptcy court surcharged petitioner's homestead exemption, not as a substitute for non-exempt property that petitioner had concealed or dissipated, but to partially compensate the estate for its enormous expenditures in exposing and avoiding petitioner's fraud on the court. As the bankruptcy court found, "based upon an ample record," petitioner "engaged in inequitable conduct, bad faith, and fraud on a truly egregious scale." Pet. App. 18. In order to counteract petitioner's fraudulent attempt to withhold non-exempt property from the estate, respondent incurred significant expenses. By surcharging petitioner's homestead exemption, the bankruptcy court "protect[ed] the integrity of the bankruptcy system" *id.* at 21, and "prevent[ed] an abuse of process," 11 U.S.C. 105(a).

The Ninth Circuit's brief, unpublished opinion in this case is the first court of appeals decision to address the question whether Section 105(a) authorizes a bankruptcy court to surcharge otherwise-exempt property in order to compensate the estate for administrative expenses caused by a debtor's abusive litigation conduct.

See Pet. App. 2 ("[T]he surcharge was calculated to compensate the estate for the actual monetary costs imposed by the debtor's misconduct, and was warranted to protect the integrity of the bankruptcy process."). Although the Ninth Circuit's Bankruptcy Appellate Panel has upheld a surcharge under similar circumstances, see *In re Onubah*, 375 B.R. 549, 556 (2007), the relevant law is undeveloped and there is no circuit conflict. The question presented in this case does overlap with the question on which the courts of appeals are divided, since both questions involve the scope of a bankruptcy court's equitable powers to address and remedy debtor misconduct. But the questions are sufficiently distinct that a decision by this Court upholding or invalidating the surcharge here would not necessarily resolve the issue presented in *Malley*, *Scrivner*, and *Latman*. The Court should therefore deny the petition for a writ of certiorari.

B. The Equitable Surcharge At Issue In This Case Was Independently Supported By The Bankruptcy Court's Inherent Authority To Sanction Fraudulent And Abusive Litigation Conduct

As applied to the circumstances of this case, Section 105(a) simply confirms the bankruptcy court's power to impose appropriate sanctions for fraudulent and abusive litigation conduct. This Court has long held that judicial bodies possess inherent authority to sanction misconduct, authority that is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 43 (1991) (quoting *Link* v. *Wabash R.R.*, 370 U.S. 626, 630-631 (1962)). A court's imposition of sanctions for litigation misconduct "transcends [the]

court's equitable power concerning relations between the parties and reaches a court's inherent power to police itself." *Id.* at 46. It encompasses the authority to order an abusive litigant to compensate his opponent for litigation expenses incurred in response to abuses of the judicial process, including by assessing attorney's fees against a party who has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Id.* at 45-46 (quoting *Alyeska Pipeline Serv. Co.* v. *Wilderness Soc'y*, 421 U.S. 240, 258-259 (1975)). A court may exercise such power even when alternative sanctions are authorized by statute or rule. See *id.* at 49 ("the inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct").

Article I bankruptcy courts, like Article III tribunals, have inherent power to sanction litigation misconduct. This Court noted in *Marrama* that, "even if [11 U.S.C.] 105(a) had not been enacted, the inherent power of every court to sanction 'abusive litigation practices' * * * might well provide an adequate justification" for a bankruptcy court to take action to remedy misconduct by a debtor. 549 U.S. at 375-376 (quoting *Roadway Express, Inc.* v. *Piper*, 447 U.S. 752 (1980)). Here, the bankruptcy court found that petitioner had engaged in systemic abuse of the bankruptcy process, including through misrepresentations to respondent and the court. See 401 B.R. 452-453. The court further found that respondent's "reasonable costs of coping with [petitioner's] deception far exceed $75,000, the exemption to which [petitioner] otherwise would be entitled." *Id.* at 453 (emphasis omitted). Those findings would have fully justified the imposition of a $75,000 sanction as an exercise of the bankruptcy court's inherent authority to

penalize petitioner's litigation misconduct and vindicate the integrity of the court's own processes.

The bankruptcy court's use of an equitable surcharge was likewise an appropriate means of achieving the same objectives. Even if petitioner had not engaged in any misconduct, he would have had no valid objection to the sale of his residence and the distribution to creditors of most of the sale proceeds. Rather, petitioner's state-law homestead exemption would simply have entitled him to a $75,000 share of the sale proceeds. In implementing its inherent authority to sanction petitioner's abusive litigation conduct, the bankruptcy court appropriately authorized respondent to retain the $75,000, rather than ordering that the money be paid over to petitioner and simultaneously directing petitioner to pay the same sum to respondent.

"The right of setoff (also called 'offset') allows entities that owe each other money to apply their mutual debts against each other, thereby avoiding 'the absurdity of making A pay B when B owes A.'" *Citizens Bank* v. *Strumpf*, 516 U.S. 16, 18 (1995) (quoting *Studley* v. *Boylston Nat'l Bank*, 229 U.S. 523, 528 (1913)). A federal court's ability to implement sanctions imposed in furtherance of its inherent authority supersedes contrary provisions of state law, including provisions that declare particular property to be exempt from execution of a money judgment. See, *e.g.*, *FTC* v. *Neiswonger*, 580 F.3d 769, 777 (8th Cir. 2009) (district court may implement civil-contempt monetary sanction by collecting otherwise-exempt property); see also *In re Ward*, 210 B.R. 531, 538 (Bankr. E.D. Va. 1997) (allowing trustee to retain amount of homestead exemption when debtors owed more money to the estate than the exemption was worth, and explaining that the homestead exemption

was "not being in any sense denied but [was] simply being applied by way of setoff to a mutual obligation arising post-petition"); cf. *Steffen* v. *Gray, Harris & Robinson, P.A.*, 283 F. Supp. 2d 1272, 1282 (M.D. Fla. 2003) (holding that district court's ability to enforce disgorgement order is not limited by state law governing exempt property), aff'd, 138 Fed. Appx. 297 (11th Cir. 2005) (Table); *SEC* v. *Musella*, 818 F. Supp. 600, 602 (S.D.N.Y. 1993) (same)

The bankruptcy court's inherent authority to sanction a litigant's egregious misbehavior, combined with background principles governing setoff, therefore provides an independent basis for affirming the surcharge in this case. Further review is not warranted.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted.

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MAY 2013

JOINT APPENDIX

No. 12-5196

IN THE

Supreme Court of the United States

STEPHEN LAW,

Petitioner,

v.

ALFRED H. SIEGEL, CHAPTER 7 TRUSTEE,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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APPENDIX A — RELEVANT DOCKET ENTRIES

U.S. Bankruptcy Court
Central District Of California (Los Angeles)
Bankruptcy Petition #: 2:04-bk-l0052-TD

Assigned to: Thomas B. Donovan
Chapter 7
Voluntary
Asset

Date filed:	01/05/2004
Deadline for filing claims:	11/15/2004
Deadline for filing claims (govt.):	07/06/2004
Deadline for objecting to discharge:	04/12/2004

* * *

01/05/2004	1	Voluntary petition under chapter 7 [KII] (Entered: 01/06/2004)

* * *

01/05/2004	5	Summary of schedules [KII] (Entered: 01/06/2004)
01/05/2004	6	Schedule A filed [KII] (Entered: 01/06/2004)
01/05/2004	7	Schedule B filed [KII] (Entered: 01/06/2004)
01/05/2004	8	Schedule C filed [KII] (Entered: 01/06/2004)

Appendix A

01/05/2004	9	Schedule D filed [KII] (Entered: 01/06/2004)
01/05/2004	10	Schedule E filed [KII] (Entered: 01/06/2004)
01/05/2004	11	Schedule F filed [KII] (Entered: 01/06/2004)
01/05/2004	12	Schedule G filed [KII] (Entered: 01/06/2004)
01/05/2004	13	Schedule H filed [KII] (Entered: 01/06/2004)
01/05/2004	14	Schedule I filed [KII] (Entered: 01/06/2004)
01/05/2004	15	Schedule J filed [KII] (Entered: 01/06/2004)
01/05/2004	16	Declaration concerning debtor's schedules [KII] (Entered: 01/06/2004)

* * *

04/19/2005	65	Motion to approve compromise of controversy and notice; Memorandum of points and authorities; Declaration of Alfred Siegel in support thereof; with proof of service - filed by Attorneys for Chapter 7 Trustee hearing on 05/18/2005 at 10:30 a.m. at 255 E.

Temple St., Courtroom 1345, Los Angeles, CA 90012[Disposed] [LQ3] Original NIBS Entry Number: 64 (Entered: 04/20/2005)

04/26/2005 66 Opposition of Defendant to Plaintiff's Motion to Approve Compromise of Controversy- Stipulation re Judgment; memorandum; declaration of LiliLin, & declaration of Peter Chow; proof of service RE: Item# 65 [WCK] Original NIBS Entry Number: 65 (Entered: 04/27/2005)

05/03/2005 67 Opposition to plaintiff's motion to approve compromise of controversy; Memorandum and Declarations of Stephen Law & Connie Chang in support thereof; with proof of service - fied by Debtor in Pro Per RE: Item# 65 [LQ3] Original NIBS Entry Number: 66 (Entered: 05/04/2005)

* * *

05/11/2005 70 Reply/Trustee's reply to Lili Lin of China's opposition to motion to approve compromise of controversy; Declaration of Lili Lin in support thereof; filed by attorney for ch. 7 trustee RE: Item# 65 [WTC] Original NIBS Entry Number: 69 (Entered: 05/12/2005)

Appendix A

05/11/2005 71 Reply/Trustee's reply to debtor's opposition to motion to approve compromise of controversy; Declaration of Lili Lin in support thereof filed by attorney for ch. 7 trustee RE: Item# 65 [WTC] Original NIBS Entry Number: 70 (Entered: 05/12/2005)

* * *

05/23/2005 73 ORDER denying stephen Law's motion to disqualify Judge Donovan with notice of entry [The motion of Stephen Law to disqualify judge Donovan, filed on April 21, 2005, is docketed on Adversary No. 04-01969-TD, see docket entry # 43] [PPC] Original NIBS Entry Number: 72 (Entered: 05/24/2005)

05/25/2005 74 ORDER granting/approving motion to compromise controversy and stipulated judgment is approved; with notice of entry of judgment or order and certificate of mailing [for additional information refer to order] RE: Item# 65 [LQ3] Original NIBS Entry Number: 73 (Entered: 05/25/2005)

05/31/2005 75 Motion to reconsider [notice of motion and motion for reconsideration of the order granting motion to approve compromise of controversy, Memo of

points & Authorities; declarations in support]; filed by Lili Lin, in pro per hearing on 07/06/2005 at 10:30 a.m. at 255 E. Temple St., Courtroom 1345, Los Angeles, CA 90012 [Disposed] [PPC] Original NIBS Entry Number: 74 (Entered: 05/31/2005)

* * *

06/29/2005 79 Reply to trustee's oppo. to mtn for reconsideration of order granting mtn to approve compromise of controversy; Memo of points and authorities; Declarations in support thereof fied by Lili Lin, Cred. pro se RE: Item# 75 [WTC] Original NIBS Entry Number: 78 (Entered: 06/30/2005)

07/08/2005 80 Motion [Trustee's notice of motion and motion for order authorizing turnover of property; Memorandum of points and authorities; Declaration of Julio Bonilla in support thereof] - with proof of service; filed by Attorneys for Chapter 7 Trustee hearing on 08/03/2005 at 10:30 a.m. at 255 E. Temple St., Courtroom 1345, Los Angeles, CA 90012[Disposed] [LQ3] Original NIBS Entry Number: 79 (Entered: 07/11/2005)

Appendix A

07/12/2005	81	ORDER to reconsider DENIED: [Please refer to order for details] with notice of entry RE: Item# 75 [WTC] Original NIBS Entry Number: 80 (Entered: 07/12/2005)
07/20/2005	82	Opposition to trustee's notice of motion and motion for order authorizing turnover of property; declaration of Andrew E. Smyth; fied by attorney for debtor RE: Item# 80 [PPC] Original NIBS Entry Number: 81 (Entered: 07/21/2005)
07/27/2005	83	Reply [Trustee's reply to debtor's opposition to motion for order authorizing turnover of property; Declarations of Julio Bonilla and Ainat Kiewe, Esq. in support thereof]- with proof of service; filed by Attorneys for Plaintiff RE: Item# 82 [LQ3] Original NI BS Entry Number: 82 (Entered: 07/28/2005)
07/27/2005	84	Objection [Trustee's EVIDENTIARY objections to the declaration of Andrew E. Smyth, Esq. filed in support of the debtor's opposition to the trustee's motion for turnover]- with proof of service - filed by Attorneys for Plaintiff RE: Item# 82 [LQ3] Original NIBS Entry Number: 83 (Entered: 07/28/2005)

08/09/2005 85 ORDER granting/approving trustee's motion for order authorizing turnover of property [11 U.S.C. 542 and Fed. R. Civ. Proc. 69[a]] with notice of entry RE: Item# 80 [PPC] Original NIBS Entry Number: 84 (Entered: 08/10/2005)

08/11/2005 86 Notice of filing transcript re Hearing May 18, 2005; filed by Andrew E. Smyth, attorney for debtor [PPC] Original NIBS Entry Number: 85 (Entered: 08/12/2005)

08/17/2005 87 Notice of appeal filed by appellant Stephen Law; Receipt # LA-026081 $255.00 RE: Item# 85 [WTC] Original NIBS Entry Number: 86. Assigned BAP number CC 05-1344 Modified on 11/24/2010 (Alcala, Maria). (Entered: 08/18/2005)

* * *

09/09/2005 93 Notice of BAP's order denying motion for stay pending appeal - BAP No. CC-05-1344 (Pennington, Pat) (Entered: 09/12/2005)

* * *

01/05/2006 97 Motion and notice of motion to surcharge debtor's Homestead exemption;

memorandum of points and authorities; request for judicial notice Filed by Chapter 7 Trustee (Attachments: 1 part 2 of 2) (Kaaumoana, William) (Entered: 01/19/2006)

01/09/2006 96 Notice of sale of estate property in re: 16150 LaMonde Street, Hacienda Heights, CA 91745, APN 8205-012-009 Filed by Steven T. Gubner, Attorney for Trustee Alfrd Siegel. Re: 80 (Hernandez, Kevin) Additional attachment(s) added on 1/17/2006 (Hernandez, Kevin). (Entered: 01/17/2006)

01/09/2006 98 Trustee's notice of motion and motion to sell real property free and clear of liens, interests and encumbrances; memorandum of points and authorities; declarations in support thereof Filed by Trustee Alfred H Siegel (Attachments: 1 Part 2 of 32 Part 3 of 3) (Pennington, Pat) (Entered: 01/20/2006)

* * *

01/18/2006 100 Opposition to Trustee's motion to surcharge Debtor's Homestead exemption; memorandum of points and authorities; request for sanctions; declaration of Stephen Law; declaration of Andrew Smyth; declaration of Lili

Lin; with proof of service - (related document(s): 97 Motion) Filed by Debtor Stephen Law (Johnson, Tina R.) (Entered: 02/01/2006)

01/18/2006 101 Opposition to Trustee's motion to sell real property free and clear of liens, interest and encumbrances; memorandum of points and authorities; objection to declaration of Jerry Lacues; declaration of Stephen Law; declaration of Andrew Smyth; declaration of Lili Lin; with proof of service - (related document(s): 98 Motion filed by Trustee Alfred H Siegel) Filed by Debtor Stephen Law (Attachments: 1 Part 2 of 2) (Johnson, Tina R.) (Entered: 02/01/2006)

01/25/2006 102 Reply to Debtor's Opposition to Motion to Surcharge Debtor's Homestead Exemption; Declaration of Ainat Kiewe in Support Thereof; with proof of service; Filed by Chapter 7 Trustee, Alfred H Siegel (Quintanar, Laura) (Entered: 02/02/2006)

01/25/2006 103 Trustee's Reply to Debtor's Opposition to Trustee's Motion to Sell Real Property; Declarations of Julio Bonilla, Gregory A Paiva, and Ainat Kiewe, Esq in support thereof; with proof of service (related document(s): 102 Debtor's Opposition)

Appendix A

Filed by Chapter 7 Trustee Alfred H Siegel (Quintanar, Laura) (Entered: 02/02/2006)

02/17/2006 107 Order Granting trustee's motion to sell real property free and clear of liens, interests and encumbrances (Related Doc # 98) Signed on 2/17/2006. (Pennington, Pat) (Entered: 02/22/2006)

* * *

02/24/2006 108 Notice of motion and motion for reconsideration of order to sell real property or alternatively, stay pending appeal, memo of points and authorities; Declarations in support thereof; with proof of service; Filed by Debtor Stephen Law in Pro Per, and Lili Lin (Attachments: 1 Part 2 of 2) (Quintanar, Laura) (Entered: 03/06/2006)

03/08/2006 109 Trustee's Opposition to debtor and Lili Lin of China's motion for reconsideration of order to sell real prop. or alt., stay pending appeal; Mem. of points and author. Hrg Mar 22, 2006 at 10:30 a.m. Filed by Trustee Alfred H Siegel (Toliver, Wanda) (Entered: 03/15/2006)

03/14/2006 110 Debtor's Opposition to Trustee's Motion to Surcharge Debtor's Homestead

Exemption; Memo of Points and Authorities; Request for Sanctions; Declaration of Stephen Law; filed by Debtor in Pro Per; with proof of service (related document(s): 97 Motion) (Quintanar, Laura) (Entered: 03/20/2006)

03/16/2006 111 Trustee's Supplemental Brief in Support of Trustee's Motion to Surcharge Debtor's Homestead Exemption; Declaration in Support Thereof; Request for Judicial Notice; with proof of service; Filed by Attorneys for Chapter 7 Trustee, Alfred H Siegel (RE: related document(s) 97 Motion). (Attachments: 1 part 2 of 52 Part 3 of 53 Part 4 of 54 Part 5 of 5) (Quintanar, Laura) (Entered: 03/21/2006)

03/17/2006 112 Debtor's REPLY to opposition of trustee; Request for sanctions, Memo of points and authorities; Declarations in support thereof; with proof of service; Filed by Debtor Stephen Law, and Creditor Lili Lin (Quintanar, Laura) (Entered: 03/22/2006)

* * *

04/12/2006 116 Transcript filed of HEARINGS HELD ON 3/22/2006; Hrg RE: Debtor's Motion

for Reconsideration of Order to Sell Real Property or Alternatively, Stay Pending Appeal; Cont'd Hrg RE Motion of Chapter 7 Trustee to Surcharge Debtors Homestead Exemption [Steven Gubner FR 2-1-06]; Cont'd Hrg RE Trustee's Motion to Sell Real Property Free and Clear of Liens, Interest and Encumbrances [Steven Gubner] FR 2-1-06 (Quintanar, Laura) (Entered: 04/12/2006)

04/24/2006 117 Motion and Notice of Motion to Disqualify Judge Thomas Donovan; Memo of Points and Authorities; Declaration of Stephen Law in Support Thereof; with proof of service; Filed by Debtor/ Creditor Stephen Law and Lili Lin (Attachments: 1 Part 2 of 2) (Quintanar, Laura) (Entered: 04/26/2006)

* * *

05/04/2006 118 Order Denying Motion for Reconsideration of Order to Sell Real Property or Alternatively, Stay Pending Appeal; Debtor's Oral Motion for a Stay Pending Appeal is Denied; Signed 5/4/2006; with notice of entry(Related Doc # 108) (Quintanar, Laura) (Entered: 05/04/2006)

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Appendix A

05/08/2006 120 Order Granting Motion (Related Doc # 97) with notice of entry Signed on 5/8/2006 (Bryant, Sandra R.) (Entered: 05/09/2006)

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06/14/2006 141 Transcript filed of hrg held on Feb 1,2006 at 10:30 am Filed by Debtor Stephen Law. (Toliver, Wanda) (Entered: 06/29/2006)

07/21/2006 142 Motion and Notice of Motion to Approve Compromise of Controversy; Memorandum of Points and Authorities; Declaration of Alfred H. Siegel; with proof of service; Filed by Chapter 7 Trustee, Alfred H Siegel (Quintanar, Laura) (Entered: 07/24/2006)

08/02/2006 143 Opposition to (related document(s): 142 Motion to approve compromise filed by Trustee Alfred H Siegel) Filed by Debtor Stephen Law and Lili Lin (Kaaumoana, William) Hrg: August 16, 2006 @ 10:30 a.m., courtroom 1345 (Entered: 08/03/2006)

* * *

08/09/2006 146 Reply to Debtor's Opposition to Trustee's Motion to Approve Compromise of

		Controversy; with proof of service; Filed by Chapter 7 Trustee, Alfred H. Siegel (related document # 143 Opposition) (Quintanar, Laura) (Entered: 08/11/2006)
8/10/2006	147	Order Denying debtor and Lili Lin of China's motion to disqualify Judgment Donovan (Related Doc # 117) Signed on 08/10/2006; with notice of entry. (Pennington, Pat) (Entered: 08/11/2006)
08/17/2006	148	Order on trustee's motion to approve compromise of controversy; GRANTED Signed on 8/17/2006. (Toliver, Wanda) (Entered: 08/21/2006)

* * *

08/30/2006	152	Notice of Motion and Motion for Reconsideration or Alternatively, Stay Pending Appeal on Order Granting Motion to Approve Compromise of Controversy; Memorandum of Points and Authorities; Declaration of Stephen Law in Support Thereof;with proof of service; Filed by Debtor/Creditor Stephen Law and Lili Lin (related document # 148 Order) (Quintanar, Laura) (Entered: 08/31/2006)

* * *

09/15/2006 155 Trustee's Notice and continued motion to sell real prop. free and clear of liens, interests and encumbrances; Mem. of points and authorities; Hrg Oct 11, 2006 at 10:30 am Filed by Trustee Alfred H Siegel. (Attachments: 1 part 2 of 2) (Toliver, Wanda) (Entered: 09/18/2006)

* * *

09/27/2006 158 Opposition to Debtor's Motion for Reconsideration or Alternatively, Stay Pending Appeal on Order Granting Trustee's Motion to Approve Compromise of Controversy; with proof of service; Filed by Chapter 7 Trustee, Alfred H. Siegel (related document #152 Motion to Reconsider (related document) (Attachments: 1 Part 2 of 2) (Quintanar, Laura) (Entered: 09/29/2006)

09/27/2006 159 Debtor's Opposition to trsutee's continued motion to sell real property free and clear of liens, interests and encumbrances; Obj. to declar. of Jerry LaCues; Memo of points and author; Declar. in support thereof; Hrg Oct. 11, 2006 at 10:30 am Filed by Debtor Stephen Law (Toliver, Wanda) (Entered: 09/29/2006)

10/04/2006 160 Trustee's Reply to Debtor's Opposition to Trustee's Continued Motion to Sell Real Property Free and Clear of Liens, Interest and Encumbrances; with proof of service; Filed by Chapter 7 Trustee, Alfred H. Siegel (related document #(159) Debtor's Opposition) (Quintanar, Laura) (Entered: 10/05/2006)

10/04/2006 161 Reply to Trustee's Opposition to Motion for Reconsideration or Alternatively, Stay Pending Appeal on Order Granting Motion to Approve Compromise of Controversy; with proof of service; Filed by Chapter 7 Trustee, Alfred H. Siegel (related document # 158 Opposition) (Quintanar, Laura) (Entered: 10/05/2006)

* * *

10/17/2006 164 Order Denying Debtor's Motion for Reconsideration or Alternatively, Stay pending Appeal on Order Granting Trustee's Motion to Approve Compromise of Controversy; Signed on 10/17/2006; with notice of entry (Related Doc # 152) (Quintanar, Laura) (Entered: 10/17/2006)

* * *

10/20/2006 166 Order on Trustee's Continued Motion to Sell Real Property Free and Clear of

Liens, Interests and Encumbrances is GRANTED; Signed on 10/20/2006; with notice of entry (FOR ADDITIONAL INFORMATION REFER TO ORDER) (RE: related document(s) 155 Trustee's Notice - filed by Trustee, Alfred H Siegel) (Quintanar, Laura) (Entered: 10/23/2006)

* * *

01/04/2007 184 Motion and Notice of Motion to Disqualify Judge Thomas Donovan; Memo of Points and Authorities; Declaration of Stephen Law in Support Thereof; with proof of service; Filed by Debtor, Stephen Law (Quintanar, Laura) (Entered: 01/05/2007)

01/05/2007 185 Notice of Order from BAP No. CC-06-1379 - RE: Order Modifying Stay Pending Appeal; It is ORDERED that the stay pending appeal of the bankruptcy court's October 23, 2006 "Order on Trustee's Continued Motion to Sell Real Property Free and Clear of Liens, Interests, and Encumbrances" will terminate without further order of the Panel UPON THE EARLIER OF THE TWO FOLLOWING EVENTS: (1) The judicial determination of the lien status of Lili Lin of China with respect to the residence of Hacienda

Heights, CA. as set forth in the Panel's memoranda of decision entered on December 29, 2206; or (2) the disposition of BAP Appeal No. CC-06-1379; Filed by U.S. Bankruptcy Appellate Panel of the Ninth Circuit (Quintanar, Laura) (Entered: 01/08/2007)

* * *

01/31/2007 192 BAP/USDC Appeal Judgmen: The Judgment of the Bankruptcy Court is REVERSED - RE: Appeal BAP/USDC Number: CC-06- 1180 KMoB RE: 124 Notice of Appeal (Quintanar, Laura) (Entered: 02/01/2007)

02/05/2007 193 Motion and Notice of Motion for an Order to Pay Debtor Homestead Exemption, Request for Sanctions against Trustee, Memo of Points and Authorities; Declaration of Stephen Law in Support Thereof; with proof of service; Filed by Debtor, Stephen Law (Quintanar, Laura) (Entered: 02/06/2007)

* * *

02/08/2007 195 Adversary case 2:07-ap-01102. Complaint by ALFRED H SIEGEL, CHAPTER 7 TR against Lili Lin. (Charge To Estate). *Complaint For Declaratory Relief*

Appendix A

Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Kiewe, Ainat) (Entered: 02/08/2007)

02/12/2007 196 Order Denying Debtor's Motion to Disqualify Judge Thomas Donovan for the reasons set forth in my Oral Ruling at the Hearing on February 7, 2007 at 10:30 a.m.; Signed on 2/12/2007; with notice of entry (Related Doc # 184) Motion to Disqualify Judge Thomas Donovan (Quintanar, Laura) (Entered: 02/13/2007)

02/14/2007 197 Opposition to (related document(s): 193 Motion filed by Debtor Stephen Law) *Trustee's Opposition to Debtor's Motion for an Order to Pay Debtor Homestead Exemption, Request for Sanctions against Trustee, with Exhibits and Proof of Service* Filed by Trustee Alfred H Siegel (Attachments: 1 Exhibit Exhibits 4 and 5 and POS) (Kiewe, Ainat) (Entered: 02/14/2007)

02/21/2007 198 Debtor's reply to trustee's opposition to motion for an order to pay debtor homestead exemption, request for sanctions against trustee (related document(s): 193 Motion filed by Debtor Stephen Law) Filed by Debtor Stephen

Law (Pennington, Pat) (Entered: 02/23/2007)

* * *

03/02/2007 204 Order Denying Motion for an order to pay debtor homestead exemption, request for sanctions against trustee (Related Doc # 193) Signed on 3/2/2007; with notice of entry. (Pennington, Pat) (Entered: 03/02/2007)

* * *

04/11/2007 210 Notice of fiing the transcript of February 28, 2007; with proof of service; Filed by Debtor, Stephen Law RE #193 Motion and #205 Notice of Appeal (Quintanar, Laura) (Entered: 04/13/2007)

* * *

05/30/2007 214 Notice of Motion and motion for an order to pay costs on the appeal, request for sanctions against Trustee, Memo of points and authorities; Declar. of Stephen Law in support thereof; Hrg July 11, 2007 at 10:30 am; Filed by Debtor Stephen Law (Toliver, Wanda) (Entered: 06/01/2007)

Appendix A

06/27/2007 215 Opposition to (related document(s): 214 Motion filed by Debtor Stephen Law) *Trustee's Opposition to Debtor's Motion for and Order to Pay Costs on the Appeal, with Exhibits A and B, and Proof of Service* Filed by Trustee Alfred H Siegel (Keshishian, Talin) (Entered: 06/27/2007)

07/03/2007 216 Reply/[Debtor's] to trustee's opposition to motion for an order to pay costs on the appeal, request for sanctions against trustee (related document(s): 214 Motion filed by Debtor Stephen Law) Filed by Debtor Stephen Law (Pennington, Pat) (Entered: 07/03/2007)

07/12/2007 217 Brief/ Memorandum by BAP AFFIRMS the order of the Bankruptcy Court in re: CC06-1427-KPaA and CC-06-1379-KPaA RE: (168) (175) (Pennington, Pat). Appealed to COA; case number 07-56239 Modified on 11/24/2010 (Alcala, Maria). (Entered: 07/18/2007)

07/20/2007 218 Order denying debtor's motion for an order to pay costs on the appeal Signed on 7/20/2007; with notice of entry (RE: related document(s) 214, motion for an order to pay costs on the appeal filed by Debtor Stephen Law). (Pennington, Pat) (Entered: 07/23/2007)

Appendix A

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10/09/2007 224 Document: Memorandum on appeal REVERSE and REMAND to the bankruptcy court for further proceedings and to issue an appropriate order in the circumstances of this case. RE: (205) (filed at U.S. Court of Appeals 10/5/07) (Pennington, Pat) Modified on 11/24/2010 (Alcala, Maria). (Entered: 10/11/2007)

10/11/2007 225 Motion/notice of motion for an order to pay debtor's claimed homestead exemptions, memorandum of points and authorities; declaration of Stephen Law in support thereof Filed by Debtor Stephen Law (Pennington, Pat) (Entered: 10/11/2007)

10/18/2007 226 Notice of application to the clerk to tax costs Filed by Debtor Stephen Law. (Pennington, Pat) (Entered: 10/19/2007)

10/18/2007 227 Application re bill of costs Filed by Debtor Stephen Law (Pennington, Pat) (Entered: 10/19/2007)

10/22/2007 228 Objection [Trustee's] to Debtors Application to the Clerk to Tax Costs; Memorandum of Points and Authorities; and Declaration of Richard L. Mann with Proof of Service Filed by Trustee

Alfred H Siegel (Sokol, Robyn) (Entered: 10/22/2007)

10/24/2007 229 Opposition to (related document(s): 225 Motion filed by Debtor Stephen Law) *Declaration of Steven T. Gubner in Support Thereof, with Proof of Service* Filed by Trustee Alfred H Siegel (Attachments: 1 Exhibit 1-42 Exhibit 5-8) (Gubner, Steven) (Entered: 10/24/2007)

* * *

10/31/2007 231 Mandate on appeals Judgment of the Bankrupty Court is REVERSED and REMANDED (BAP No. CC-07-1127-DKMo RE: (205) (Pennington, Pat) Modified on 11/24/2010 (Alcala, Maria). (Entered: 10/31/2007)

10/31/2007 232 Reply to trustee's objection to debtor's application to the clerk to tax costs (related document(s): 227 Application filed by Debtor Stephen Law) Filed by Debtor Stephen Law (Pennington, Pat) (Entered: 11/01/2007)

10/31/2007 233 Reply to trustee's opposition to motion for an order to pay debtor's claimed homestead exemption (related document(s): 225 Motion filed by Debtor

Stephen Law) Filed by Debtor Stephen Law (Attachments: 1 part 2 of 2) (Pennington, Pat) (Entered: 11/01/2007)

* * *

11/14/2007 238 Order Re: Debtor's Cost Bill on Appeal; with notice of entry of judgment or order and certificate of mailing. Signed on 11/14/2007 (RE: related document(s)227, Application (Generic) filed by Debtor Stephen Law). (Milano, Sonny) (Entered: 11/16/2007)

11/15/2007 239 Order Denying Motion of debtor for payment of homestead exemption; REFER TO ORDER, With Notice of Entry and Certificate of Mailing (Related Doc # 225) Signed on 11/15/2007. (Paredes, Linda) (Entered: 11/19/2007)

12/13/2007 240 Transcript filed; hearing date(s): November 7, 2007 at 10:30 a.m. Filed by (RE: related document(s) 225 Motion). (Fortier, Stacey) (Entered: 12/17/2007)

03/06/2008 245 Motion For Sanctions/Notice of motion and motion for an order to show cause why the sanctions shall not be imposed against trustee; Declar. of Stephen Law in support thereof; Hrg 4-3-08 at 11:00 am; Filed by Debtor Stephen Law (Toliver, Wanda) (Entered: 03/10/2008)

Appendix A

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03/10/2008 246 Notice of motion/application *on First Interim Application of Ezra Brutzkus Gubner LLP, Attorneys for Alfred H. Siegel, Ch. 7 trustee, for Compensation* Filed by Trustee Alfred H Siegel. (Gubner, Steven) (Entered: 03/10/2008)

03/10/2008 247 Application for Compensation for Ezra Brutzkus Gubner LLP, Trustee's Attorney, Period: 4/21/2004 to 1/31/2008, Fee: $683592.00, Expenses: $38532.19. Filed by Attorneys Steven T Gubner, Ezra Brutzkus Gubner LLP (Attachments: 1 Exhibit Part 2 2 Exhibit Part 3 3 Exhibit Part 4 4 Exhibit Part 5 5 Exhibit Part 6 6 Exhibit Part 7 7 Exhibit Part 8 8 Exhibit Part 9 9 Exhibit Part 10 10 Exhibit Part 11) (Gubner, Steven) (Entered: 03/10/2008)

03/13/2008 249 Declaration of Alan L. Kahn re: interim fees incurred by Grobstein, Horwath & Company accountants for the chapter 7 trustee Filed by Creditor Alan L Kahn. (Pennington, Pat) (Entered: 03/18/2008)

03/17/2008 248 Opposition to (related document(s): 245 Motion For Sanctions filed by Debtor Stephen Law) Filed by Trustee Alfred H Siegel (Gubner, Steven) (Entered: 03/17/2008)

Appendix A

03/20/2008 250 Opposition to application of Ezra Brutzkus Guner LLP, attorney for trustee filed by Stephen Law (related document(s): 247 Application for Compensation for Ezra Brutzkus Gubner LLP , Trustee's Attorney, Period: 4/21/2004 to 1/31/2008, Fee: $683592.00, Expenses: $38532.19.) (Fortier, Stacey) (Entered: 03/21/2008)

03/20/2008 251 Reply to trustee's opposition to motion for an order to show cause (related document(s): 245 248 Motion For Sanctions filed by Debtor Stephen Law) Filed by Debtor Stephen Law (Fortier, Stacey) (Entered: 03/21/2008)

03/24/2008 252 Declaration re: *Alfed H. Siegel in Support, with Proof of Service*, Filed by Trustee Alfred H Siegel (RE: related document(s)247 Application for Compensation for Ezra Brutzkus Gubner LLP, Trustee's Attorney, Period: 4/21/2004 to 1/31/2008, Fee: $683592.00, Expenses: $38532.19.). (Gubner, Steven) (Entered: 03/24/2008)

03/27/2008 253 Reply to (related document(s): 247 Application for Compensation for Ezra Brutzkus Gubner LLP, Trustee's Attorney, Period: 4/21/2004 to 1/31/2008, Fee: $683592.00, Expenses: $38532.19.) *Reply to Debtor's Opposition to Interim*

Appendix A

Application for Fees and Expenses Filed by Trustee Alfred H Siegel (Gubner, Steven) (Entered: 03/27/2008)

03/27/2008 254 Supplemental / Debtor's supp. reply to trustee's oppo. to motion for an order to show cause why the sanctions shall not be imposed against trustee; (related doc #251) Filed by Debtor Stephen Law. (Toliver, Wanda) (Entered: 04/01/2008)

* * *

04/04/2008 256 Memorandum - RE: Appeal Filed by United States Bankruptcy Appellate Panel of the Ninth Circuit RE: #205 and #235 Notice of Appeal (Quintanar, Laura) (Entered: 04/07/2008)

04/04/2008 257 Order denying Stephen Law's motion for an order to show cause why the sanctions shall not be imposed against trustee (Related Doc # 245) Signed on 4/4/2008. (Pennington, Pat) (Entered: 04/07/2008)

04/10/2008 258 Motion and Notice of Motion for Reconsideration on Order Granting EBG'S Application for Compensation of Fees and Expenses, or in Alternatively, Stay Order on Pending Appeal; Memorandum of Points and Authorities; Declaration in Support Thereof; with

Proof of Service; Filed by Debtor, Stephen Law (Quintanar, Laura) (Entered: 04/11/2008)

04/10/2008 259 Motion and Notice and Debtor's Third Motion for an Order to Pay Debtor's Homestead Exemption; Memo of Points and Authorities; Declarations in Support Thereof; with Proof of Service; Filed by Debtor, Stephen Law (Quintanar, Laura) (Entered: 04/11/2008)

04/10/2008 260 Declaration of Lili Lin of Artesia; with proof of service; Filed by Debtor, Stephen Law (Quintanar, Laura) (Entered: 04/11/2008)

04/22/2008 261 Order approving first interim application of Ezra Brutzkus Gubner LLP, attorneys for Alfred H Siegel, chapter 7 trustee, for compensation of fees and expenses [11 U.S.C. Section 330, 331, Fed. R.Civ. Proc 2016]; GRANTED, fees allowed $211,467.81, and expenses $38,532.19 (see order for details) Re: Signed on 4/22/2008 (RE: related document(s) 247, Application for Compensation). (Fortier, Stacey) (Entered: 04/22/2008)

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Appendix A

04/23/2008 262 Opposition to (related document(s): 259 Motion filed by Debtor Stephen Law) *Trustee's Opposition to Debtor's Third Motion for an Order to Pay Debtor's Claimed Homestead Exemption* Filed by Trustee Alfred H Siegel (Attachments: 1 Exhibit 1-72 Exhibit 8-10) (Gubner, Steven) (Entered: 04/23/2008)

04/23/2008 263 Opposition to (related document(s): 258 Motion to Reconsider filed by Debtor Stephen Law) *Opposition of Ezra Brutzkus Gubner to Debtor's Motion for Reconsideration on Order Granting Application for Compensation of Fees and Expenses, etc.* Filed by Attorney Ezra Brutzkus Gubner LLP (Gubner, Steven) (Entered: 04/23/2008)

04/24/2008 264 Order Denying Motion To Reconsider and stay pending appeal; Hrg May 7, 2008 at 10:30 a.m.; with notice of entry (Related Doc # 258) Signed on 4/24/2008. (Toliver, Wanda) (Entered: 04/25/2008)

* * *

04/25/2008 268 Motion *and Notice of Motion to Surcharge Debtor's Homestead Exemption* Filed by Trustee Alfred H Siegel (Attachments: 1 Exhibit 1-72 Exhibit 8-123 Exhibit 13-17,

part 14 Exhibit 17 part 25 Exhibit 18-236 Exhibit 24-307 Exhibit 31-358 Exhibit 36-389 Exhibit 39-4010 Exhibit 41-44 and Proof of Service) (Gubner, Steven) (Entered: 04/25/2008)

04/25/2008 269 Declaration re: *Declaration of Diane Browning in Support* Filed by Trustee Alfred H Siegel (RE: related document(s) 268 Motion *and Notice of Motion to Surcharge Debtor's Homestead Exemption*). (Gubner, Steven) (Entered: 04/25/2008)

04/25/2008 270 Declaration re: *Declaration of Steven T. Gubner in Support* Filed by Trustee Alfred H Siegel (RE: related document(s) 268 Motion *and Notice of Motion to Surcharge Debtor's Homestead Exemption*). (Gubner, Steven) (Entered: 04/25/2008)

* * *

04/30/2008 277 Reply to Trustee's Opposition to Debtor's Third Motion for an Order to Pay Debtor's Homestead Exemption; with proof of service; Filed by Debtor, Stephen Law (related document: #259 Motion; filed by Debtor, Stephen Law) (Quintanar, Laura) (Entered: 05/01/2008)

Appendix A

* * *

05/07/2008 279 Opposition [filed by debtor] to trustee's motion to surcharge debtor's homestead exemption; request for sanctions against trustee(related document(s): 268 Motion and Notice of Motion to Surcharge Debtor's Homestead Exemption filed by Trustee Alfred H Siegel) Filed by Debtor Stephen Law (Pennington, Pat) (Entered: 05/09/2008)

05/14/2008 280 Reply to (related document(s): 268 Motion *and Notice of Motion to Surcharge Debtor's Homestead Exemption* filed by Trustee Alfred H Siegel) *Reply to Debtor's Opposition to Trustee's Motion to Surcharge Debtor's Homestead Exemptions and Request for Sanctions, with Proof of Service.* Filed by Trustee Alfred H Siegel (Gubner, Steven) (Entered: 05/14/2008)

* * *

06/04/2008 283 Transcript filed for hearing date(s): 4/3/08 (Pennington, Pat) (Entered: 06/05/2008)

* * *

Appendix A

07/08/2008 288 Motion and Notice of Motion by Chapter 7 Trustee to Compel Debtor's Attendance at his Deposition and Produce Documents and Request for Sanctions Filed by Trustee Alfred H Siegel (Gubner, Steven) (Entered: 07/08/2008)

* * *

08/05/2008 291 Opposition to (related document(s): 288 Motion and Notice of Motion by Chapter 7 Trustee to Compel Debtor's Attendance at his Deposition and Produce Documents and Request for Sanctions filed by Trustee Alfred H Siegel) Filed by Debtor Stephen Law (Fortier, Stacey) (Entered: 08/07/2008)

08/13/2008 292 Reply to (related document(s): 288 Motion and Notice of Motion by Chapter 7 Trustee to Compel Debtor's Attendance at his Deposition and Produce Documents and Request for Sanctions filed by Trustee Alfred H Siegel) Filed by Trustee Alfred H Siegel (Gubner, Steven) (Entered: 08/13/2008)

08/27/2008 293 Order Granting Motion to compel Debtor's attendance at his deop. and produce docu. and for award of sanctions against Debtor (Please refer to order

for details) with notice of entry (Related Doc # 288) Signed on 8/27/2008. (Toliver, Wanda) Additional attachment(s) added on 8/28/2008 (Toliver, Wanda). (Entered: 08/28/2008)

* * *

09/17/2008 298 Notice of transcripts filed; Appellant does not plan to designate any portion of the transcript; (related doc # 294) Filed by Debtor Stephen Law. (Toliver, Wanda) (Entered: 09/18/2008)

09/19/2008 299 Order after hearings on chapter 7 trustee's motion to surcharge debtor's homestead exemption and debtor's third motion to pay homestead exemption; motion continued to 11/5/08 at 10:30 a.m. (see order for details) Re: Signed on 9/19/2008. 268 (Fortier, Stacey) (Entered: 09/19/2008)

10/10/2008 300 Motion and notice of motion for an order imposing sanction on trustee; memorandum of points and authorities; declaration in support thereof Filed by Debtor Stephen Law (Pennington, Pat) (Entered: 10/17/2008)

10/10/2008 301 Motion and notice of motion for an order to pay costs on the appeal, memorandum

of points and authorities; declaration of Stephen Law in support thereof Filed by Debtor Stephen Law (Pennington, Pat) (Entered: 10/17/2008)

10/22/2008 302 Opposition to (related document(s): 301 Motion filed by Debtor Stephen Law) Opposition to Motion for an Order to Pay Costs on Appeal, etc. Filed by Trustee Alfred H Siegel (Gubner, Steven) (Entered: 10/22/2008)

10/22/2008 303 Opposition to (related document(s): 300 Motion filed by Debtor Stephen Law) Opposition to Motion for Order Imposing Sanctions on Trustee Filed by Trustee Alfred H Siegel (Gubner, Steven) (Entered: 10/22/2008)

10/22/2008 304 Supplemental Memorandum of Points and Authorities in Support of Motion to Surcharge Debtor's Homestead Exemption and Supplemental Exhibits in Support Thereof Filed by Trustee Alfred H Siegel. (Attachments: 1 Part 2 of 2) (Gubner, Steven) (Entered: 10/22/2008)

10/22/2008 305 Request for judicial notice in Support of Supplemental Memorandum of Points and Authorities in Support of Motion to Surcharge Debtor's Homestead

Exemption Filed by Trustee Alfred H Siegel (RE: related document(s)304, Supplemental). (Gubner, Steven) (Entered: 10/22/2008)

10/22/2008 306 Supplemental / debtor's supplemental evidence in support of his third motion for an order to pay homestead exemption Filed by Debtor Stephen Law. (Attachments: 1 Part 2 of 2) (Pennington, Pat) (Entered: 10/24/2008)

10/22/2008 307 Notice of lodging deposition transcript of Stephen Law, Volumes I and II Filed by Steven T. Gubner. (Pennington, Pat) (Entered: 10/24/2008)

10/29/2008 308 Reply to (related document(s): 259 Motion filed by Debtor Stephen Law) *Reply to Debtor's Supplemental Evidence in Support of his Third Motion for an Order to Pay Homestead Exemption* Filed by Trustee Alfred H Siegel (Gubner, Steven) (Entered: 10/29/2008)

10/29/2008 309 Opposition to Trustee's supplemental mem. of points and author. in support of motion to surcharge Debtor's homestead exemption; Hrg Nov. 5, 2008 at 10:30 am; (related document(s): 268) Filed by Debtor Stephen Law (Toliver, Wanda) (Entered: 11/04/2008)

10/29/2008 310 Objection (evid) to declar. of Richard L Mann filed in reply to Debtor's oppo. to trustee's motion to surcharge Debtor's homestead exemptions and request for sanctions; Hrg Nov 5, 2008 at 10:30 am; (related document(s): 268) Filed by Debtor Stephen Law (Toliver, Wanda) (Entered: 11/04/2008)

10/29/2008 311 Objection (evid) to declar. of Richard L. Mann filed in support of trustee's oppo. to Debtor's motion for an order imposing sanction on trustee; Hrg Nov 5, 2008 at 10:30 am; (related document(s): 300) Filed by Debtor Stephen Law (Toliver, Wanda) (Entered: 11/04/2008)

10/29/2008 312 Objection (evid) to declar. of Steven T Gubner filed in support of motion to surcharge Debtor's homestead exemption; Hrg Nov 5, 2008 at 10:30 am; (related document(s): 268) Filed by Debtor Stephen Law (Toliver, Wanda) (Entered: 11/04/2008)

10/29/2008 313 Objection (evid) to declar. of Richard L Mann filed in support of trustee's oppo. to Debtor's motion for an order to pay costs on the appeal; Hrg Nov 5, 2008 at 10:30 am; (related document(s): [294) Filed by Debtor Stephen Law (Toliver, Wanda) (Entered: 11/04/2008)

10/29/2008 314 Reply to trustee's oppo. to motion for an order imposing sanction on trustee; Hrg Nov 5, 2008 at 10:30 am;(related document(s): 300) Filed by Debtor Stephen Law (Toliver, Wanda) (Entered: 11/04/2008)

10/29/2008 315 Reply to trustee's oppo. to Debtor's motion for an order to pay costs on appeal; Hrg Nov 5, 2008 at 10:30 am; (related document(s): 301 294)) Filed by Debtor Stephen Law (Toliver, Wanda) (Entered: 11/04/2008)

* * *

11/20/2008 318 Request for judicial notice Supplemental Filed by Trustee Alfred H Siegel (RE: related document(s)268 Motion and Notice of Motion to Surcharge Debtor's Homestead Exemption). (Gubner, Steven) (Entered: 11/20/2008)

* * *

12/04/2008 320 Debtor's proposed Findings of Fact and opposition to trustee's proposed findings of facts and conclusion of law (Pennington, Pat) (Entered: 12/11/2008)

12/11/2008 321 Objection (related document(s): 320, Findings of Fact and Conclusions of Law) Trustee's Objections to Debtor's Proposed Findings of Fact and Conclusions of Law and Reply to Debtor's Objections to Trustee's Proposed Findings of Fact and Conclusions of Law Filed by Trustee Alfred H Siegel (Gubner, Steven) (Entered: 12/11/2008)

12/17/2008 322 Reply/Debtor's reply to trustee's obj. to Debtor's proposed findings of fact and conclusions of law; (related document(s): 268) Filed by Debtor Stephen Law (Toliver, Wanda) (Entered: 12/22/2008)

* * *

02/20/2009 325 Memorandum decision regarding trustee's motion to surcharge debtor's homestead exemption (Related Doc # 268) Signed on 2/20/2009 (Pennington, Pat) (Entered: 02/20/2009)

* * *

02/27/2009 327 Order denying debtor's motion for an order to pay costs on the appeal (Related Doc # 301) Signed on 2/27/2009 (Pennington, Pat) (Entered: 02/27/2009)

* * *

05/06/2009 338 Transcript regarding Hearing Held 11/05/08 RE: DEBTOR'S MOTION FOR AN ORDER IMPOSING SANCTIONS ON TRUSTEE. Remote electronic access to the transcript is restricted until 08/4/2009. The transcript may be viewed at the Bankruptcy Court Clerk's Office. [For transcriber contact information, call the applicable divisional office where the case was filed.] Notice of Intent to Request Redaction Deadline Due By 5/13/2009. Redaction Request Due By 05/27/2009. Redacted Transcript Submission Due By 06/8/2009. Transcript access will be restricted through 08/4/2009. (Martens, Holly) (Entered: 05/06/2009)

* * *

11/12/2009 380 BAP/USDC appeal judgment BAP Re: Appeal BAP/USDC Number: CC 09-1077 PaMkH, Ruling:AFFIRMED, Signed on 11/12/2009 (RE: related document(s)329 Notice of Appeal filed by Debtor Stephen Law). (Toliver, Wanda). Appealed to COA case number 09-60046 Modified on 11/24/2010 (Alcala, Maria). (Entered: 11/16/2009)

11/12/2009 381 Brief/Memorandum Filed by BAP (RE: related document(s)329 Notice

of Appeal). (Toliver, Wanda) (Entered: 11/16/2009)

* * *

06/30/2011 404 Chapter 7 Trustee's Final Account, Certification that the Estate has been Fully Administered and Application of Trustee to be Discharged flied on behalf of Trustee Siegel. The United States Trustee has reviewed the Final Account, Certification that the Estate has been Fully Administered and Application of Trustee to be Discharged. The United States Trustee does not object to the relief requested. Filed by United States Trustee. (Maroko, Ron) (Entered: 06/30/2011)

* * *

06/29/2012 413 Order denying discharge [Original order entered on Adversary No. 2:04-0672TD on 9/27/2005]. (Pennington-Jones, Patricia) (Entered: 06/29/2012)

* * *

06/10/2013 416 Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals filed on behalf of Trustee

(amended TFR) Siegel. The United States Trustee has reviewed the Chapter 7 Trustee's Final Report. Filed by United States Trustee. (Maroko, Ron) (Entered: 06/10/2013)

* * * *

Appendix A

General Docket
U. S. Bankruptcy Appellate Panel
for the Ninth Circuit

Bankruptcy Appellate Panel Docket #: 09-1077
Stephen Law v. Alfred Siegel, Ch 7 Trustee
Appeal From: California Central - Los Angeles
Fee Status: In Forma Pauperis

Docketed: 03/10/2009
Termed: 10/22/2009

Case Type Information:
1) Bankruptcy
2) Chapter 7 Non-Business
3) null

Originating Court Information:
District: 0973-2 : 04-10052
Trial Judge: Thomas B. Donovan, U.S. Bankruptcy Judge
Date Filed: 01/05/2004
Date Order/Judgment: 02/20/2009
Date NOA Filed: 03/02/2009
Date Rec'd BAP: 03/09/2009

* * *

03/09/2009	1	Received NOTICE OF APPEAL filed in Bankruptcy Court on 03/02/2009, NOTICE OF REFERRAL, TRANSMITTAL FORM & "COPY" BK.CT. 02/20/2009 MEMORANDUM DECISION (Re: trustee's motion

to surcharge debtor's homestead exemption). (VB)

* * *

06/29/2009 20 "Received" (original and 4 copies) by Appellant Stephen Law - APPELLANT'S "OPENING" BRIEF & EXCERPTS OF RECORD (Excerpts in CD form "ONLY"). Served on 06/29/2009. (NOTE: Appellant's excerpts of record deficient as no "hard copies" provided to the BAP.) (VB)

* * *

06/29/2008 32 Filed (original and 4 copies) by Appellant Stephen Law - APPELLANT'S "OPENING" BRIEF. Served on 06/29/2009. (NOTE: Appellant's "hard copies" excerpts of record submitted to the BAP on 07/29/2009. Refer to 07/13/2009 BAP order concerning submission of excerpts of record.) (VB)

* * *

07/20/2009 25 Filed (ECF) Attorney Mr. Steven Todd Gubner, Esquire for Appellee Alfred H. Siegel's brief on appeal; served on 07/20/2009 US mail - Appellant Law; email - Appellant Law; Attorney for Appellee: Gubner. (STG)

01/20/2009	26	Filed (ECF) Attorney Mr. Steven Todd Gubner, Esquire for Appellee Alfred H. Siegel's Request for judicial notice--(Edited 07/23/2009 by SDM); served on 07/20/2009 served by: US mail - Appellant Law; email - Appellant Law; Attorney for Appellee: Gubner. (STG)

* * *

07/29/2009	28	Filed (ECF) Party Mr. Stephen Law's reply brief on appeal; served on 07/29/2009 email - Appellant Law; Attorney for Appellee: Gubner. (SL)

* * *

07/29/2009	30	Filed by Appellant Mr. Stephen Law (4 copies) - APPELLANT'S EXCERPTS OF RECORD IN 4 VOLUMES. Served on 06/29/2009. Served on 06/29/2009. (NOTE: Scanned items: "Cover Sheets", Table of Contents, Proof of Service ONLY - RE: Excerpts of Records in 4 volumes) (NOTE: Refer to BAP order of 07/13/2009 concerning filing of excerpts of the record.) (VB)
07/29/2009	31	Filed (3 copies) by Appellant Mr. Stephen Law - APPELLANT'S "SUPPLEMENTAL" EXCERPTS OF RECORD IN 1 VOLUME. Served on 06/29/2009. (VB)

Appendix A

* * *

10/22/2009 40 CLOSED: Case closed: Affirmed; Terminated on the merits after submissions without oral hearing; Written, Unsigned, Unpublished; Judge: Pappas authoring affirmed 10/22/2009; Pappas, Markell and Hollowell 10/22/2009 09-1077 Affirmed; Memorandum. Judge Markell has concurred. (VB)

10/22/2009 41 FILED AND ENTERED JUDGMENT. [EOD] Date: 10/22/2009. Mandate to issue: 11/09/2009. (VB)

* * *

10/22/2009 43 DISPOSITION AND NOTICE OF ENTRY OF JUDGMENT sent to parties, regional U.S. Trustee and Bankruptcy Clerk. (VB)

11/08/2009 44 Notice of Appeal to the 9th Circuit (ECF) filed by Party Mr. Stephen Law; Fee status: Not Paid; Receipt No.: none; served on 11/08/2009 served by: email - Appellant Law; Attorney for Appellee: Gubner. (SL)

11/09/2009 45 MANDATE ISSUED to Bankruptcy Court Los Angeles, CA (CAC). (VB)

* * * *

Appendix A

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 09-60046
In re: Stephen Law
Appeal From: BAP, Los Angeles Bankruptcy Court
Fee Status: IFP

Docketed: 11/10/2009
Termed: 06/06/2011

Case Type Information:
1) bankruptcy appellate panel
2) united states
3) null

Originating Court Information:
District: 0973-2 : 09-1077 -PaMkH
Trial Judge: Eileen W. Hollowell, Bankruptcy Judge
Trial Judge: Bruce A. Markell, Bankruptcy Judge
Trial Judge: Jim D. Pappas, Bankruptcy Judge
Date Filed: 03/09/2009
Date Order/Judgment: 10/22/2009
Date Order/Judgment EOD: 10/22/2009
Date NOA Filed: 11/09/2009
Date Rec'd COA: 11/09/2009

* * *

11/10/2009	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF APPELLANT IN PRO PER AND COUNSEL FOR APPELLEE. SEND CADS: No.

Appendix A

Original bankruptcy court: Los Angeles - CAC. Setting schedule as follows: Fee due from Appellant Stephen Law on 11/09/2009. Appellant Stephen Law opening brief due 12/21/2009. Appellee Alfred H. Siegel answering brief due 01/20/2010 Appellant's optional reply brief is due 14 days after service of the answering brief. [7125760] (FB)

* * *

03/22/2010 9 Submitted (ECF) Opening brief for review. Submitted by - Mr. Stephen Law and Appellant Mr. Stephen Law. Date of service: 03/22/2010. (7274365) (SL)

03/24/2010 10 Filed clerk order: The opening brief [9] submitted by Mr. Stephen Law is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, with a blue cover, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. (7277210) (FT)

* * *

04/20/2010 12 Submitted (ECF) Answering brief for review. Submitted by Appellee Alfred H. Siegel. Date of service: 04/20/2010. (73085291 (STG)

04/22/2010	13	Filed clerk order: The answering brief [12] submitted by Alfred H. Siegel is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, with a red cover, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. (7311128) (FT)

* * *

05/14/2010	16	Submitted (ECF) Reply brief for review. Submitted by - Mr. Stephen Law and Appellant Mr. Stephen Law. Date of service: 05/14/2010. (7337902) (SL)
05/19/2010	17	Filed clerk order: The reply brief [16] submitted by Mr. Stephen Law is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, with a gray cover, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. (7342422) (FT)

* * *

06/06/2011	20	FILED MEMORANDUM (HARRY PREGERSON, SIDNEY R. THOMAS

and RICHARD A. PAEZ) AFFIRMED. FILED AND ENTERED JUDGMENT. [7774682] (AG)

06/17/2011 21 Filed (ECF) - Mr. Stephen Law and Appellant Mr. Stephen Law petition for rehearing en banc (from 06/06/2011 memorandum). Date of service: 06/17/2011. (7789791) (SL)

* * *

04/26/2012 23 MANDATE ISSUED. (HP, SRT and RAP) [8154404] (TB)

* * * *

APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED APRIL 18, 2012

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 09-60046

In re: STEPHEN LAW,

Debtor,

STEPHEN LAW,

Appellant,

v.

ALFRED H. SIEGEL, Chapter 7 Trustee,

Appellee.

BAP No. 09-1077-PaMkH

ORDER

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

The full court has been advised of the petition for rehearing *en banc* and no judge has requested a vote on whether to rehear the matter *en banc*. *See* Fed. R. App. P. 35.

Law's petition for rehearing *en banc* is denied.

No further filings shall be accepted in this closed case.

APPENDIX C — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED JUNE 6, 2011

United States Court of Appeals,
Ninth Circuit.

In re: Stephen LAW, Debtor,
Stephen Law, Appellant,

v.

Alfred H. Siegel, Chapter 7 Trustee, Appellee.

No. 09–60046.
Submitted May 24, 2011.*

Filed June 6, 2011.

Appeal from the Ninth Circuit, Bankruptcy Appellate Panel, Pappas, Markell, and Hollowell, Bankruptcy Judges, Presiding. BAP No. 09–1077–PaMkH.

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

MEMORANDUM**

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*The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

**This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36–3.

Appendix C

Stephen Law, a Chapter 7 debtor, appeals pro se from the Bankruptcy Appellate Panel's ("BAP") order affirming the bankruptcy court's orders surcharging Law's homestead exemption and imposing discovery sanctions. We have jurisdiction under 28 U.S.C. § 158(d). We review de novo the bankruptcy court's conclusions of law and for clear error its factual findings. *Latman v. Burdette*, 366 F.3d 774, 781 (9th Cir. 2004). We review for an abuse of discretion the imposition of discovery sanctions. *Freeman v. San Diego Ass'n of Realtors*, 322 F.3d 1133, 1156 (9th Cir. 2003). We affirm.

The BAP properly affirmed the bankruptcy court's order granting the trustee's surcharge motion because the surcharge was calculated to compensate the estate for the actual monetary costs imposed by the debtor's misconduct, and was warranted to protect the integrity of the bankruptcy process. *See Latman*, 366 F.3d at 786 (recognizing inherent power of bankruptcy courts to equitably surcharge a debtor's exemption to protect integrity of the bankruptcy process and to ensure that debtor does not exempt amount greater than allowed under Bankruptcy Code); *see also Onubah v. Zamora (In re Onubah)*, 375 B.R. 549, 556 (9th Cir. BAP 2007) (a surcharge should be calculated to compensate the estate for the actual monetary costs imposed by the debtor's misconduct).

The BAP properly affirmed the bankruptcy court's order imposing discovery sanctions on Law, in light of Law's refusal to comply with the trustee's permissible

discovery requests in a contested matter. *See* Fed. R. Bankr. P. 9014 (Bankruptcy Rules 7028–7037 apply in contested matters); Fed. R. Bankr. P. 7030 (permitting depositions as outlined in Fed. R. Civ. P. 30); Fed. R. Bankr. P. 7034 (providing for requests for production of documents as outlined in Fed. R. Civ. P. 34).

Law's remaining contentions are unpersuasive.

AFFIRMED.

APPENDIX D — MEMORANDUM OF THE UNITED STATES BANKRUPTCY APPELLATE PANEL, OF THE NINTH CIRCUIT, FILED OCTOBER 22, 2009

United States Bankruptcy Appellate Panel,
of the Ninth Circuit.

In re Stephen LAW,

Debtor.

Stephen Law,

Appellant,

v.

Alfred H. Siegel, Chapter 7 Trustee,

Appellee.

BAP No. CC–09–1077–PaMkH.
Bankruptcy. No. LA 04–10052–TD.
Submitted Without Oral Argument on Sept. 25, 2009.[1]

Filed Oct. 22, 2009.

Appeal from the United States Bankruptcy Court for the Central District of California, Hon. Thomas Donovan, United States Bankruptcy Judge, Presiding.

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1. By Order entered on September 1, 2009, the Panel approved the stipulation of the parties that this appeal be decided on the briefs and record without oral argument. 9th Cir BAP Rule 8012–1.

Appendix D

Before: PAPPAS, MARKELL and HOLLOWELL, Bankruptcy Judges.

MEMORANDUM[2]

PER CURIAM.

Chapter 7[3] debtor Stephen Law ("Debtor") appeals an order entered by the bankruptcy court surcharging his entire homestead exemption of $75,000. Debtor also appeals an order compelling his attendance at a deposition and imposing a sanction of $3,520 payable to the trustee for failure to comply timely with discovery requests. We AFFIRM both orders.

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2. This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

3. Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1330, as enacted and promulgated prior to the effective date (October 17, 2005) of the relevant provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109–8, April 20, 2005, 119 Stat. 23, and to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037. The Federal Rules of Civil Procedure are referred to as "Civil Rules."

Appendix D

FACTS[4]

On January 5, 2004, Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code. Alfred H. Siegel was appointed to serve as chapter 7 trustee ("Trustee"). Debtor's residence in Hacienda Heights, California (the "Property") was the sole asset of the bankruptcy estate.

Debtor claimed a $75,000 homestead exemption in the Property. Debtor's schedules indicated the Property had a value of $363,348 and that it was subject to two voluntary liens at the time of the bankruptcy filing. The first priority lien was a note and deed of trust in favor of Washington Mutual Bank in the amount of $147,156.52; the second

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4. The many disputes involving Debtor arising in his bankruptcy case have resulted in over a dozen appeals to the Panel and several to the Court of Appeals. In its many decisions issued over the years, the Panel has provided in great detail the facts surrounding Debtor's bankruptcy filings, and his numerous contests with the chapter 7 trustee concerning the administration of the bankruptcy estate. *See, e.g., Law v. Siegel (In re Law)*, BAP nos. CC-05-1303/1344 (9th Cir. BAP December 29, 2006), *aff'd* 308 F. App'x 161 (9th Cir. 2009); *Lin v. Siegel (In re Law)*, BAP nos. CC-06-1427/1379 (9th Cir. BAP July 10, 2007), *aff'd* 308 F. App'x 152 (9th Cir. 2009); *Law v. Siegel (In re Law)*, BAP no. CC-07-1127 (9th Cir. BAP October 5, 2007). Those BAP decisions are available through PACER or via the Panel's public website, available at http:// www.bap09.uscourts.gov. Because the facts are well known to the parties to this appeal, and to avoid unnecessary repetition in the record, we recount here only those facts relevant to the instant appeal.

priority lien was, allegedly, a note and deed of trust for $156,929.04 in favor of "Lin's Mortgage & Associates."

The First Surcharge Motion

On January 5, 2006, Trustee moved to sell the Property.[5] At the same time, Trustee filed a motion to surcharge Debtor's homestead exemption ("First Surcharge Motion") contending that Debtor had engaged in fraudulent conduct, exhibited bad faith by pursuing frivolous litigation, and failed to comply with the bankruptcy court's orders regarding Trustee's administration of the Property. In particular, Trustee alleged that Debtor had lied about the existence and bona fides of the alleged second mortgage on the Property held by the creditor known as Lili Lin.

Debtor responded to the First Surcharge Motion, denied that he had engaged in any fraudulent conduct, declared that he had borrowed a total of $168,000 from

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5. The bankruptcy court conducted a hearing on the sale motion on February 1, 2006, at which Trustee was represented by counsel and Debtor appeared pro se. The court approved the sale motion by order entered February 14, 2006; escrow closed and the Property was sold on March 9, 2006. The sale proceeds totaled $208,777.91 after payment of all costs of sale and satisfaction of the first mortgage. The sale proceeds are held by Trustee. Debtor objected to the sale and appealed the sale order to the Panel on February 6, 2006. Debtor's motions to obtain a stay pending appeal were denied by both the Panel and the Ninth Circuit and Debtor's appeal was dismissed as moot on December 29, 2006. *Law v. Siegel (In re Law)*, BAP no. CC–05–1344 (9th Cir. BAP December 29, 2006).

Lili "Lin of China"[6] and that he had secured the loan with the second deed of trust on the Property. Attached to Debtor's declaration was another declaration, purportedly executed by Lili Lin of China in Guangzou, China, stating that she had indeed lent that sum to Debtor and held the second deed of trust on the Property to secure the loan.

On March 22, 2006, the bankruptcy court granted the First Surcharge Motion. In deciding to surcharge Debtor's homestead, the bankruptcy court observed,

> [I]t seems to me that all things considered, it is basically Mr. Law's conduct that has been the direct cause of the expenses that have been incurred by the Trustee.... I would have to surmise that substantial additional expenses are going to be incurred by the estate in defending Mr. Law's appeals.[7]

Debtor appealed the bankruptcy court's order granting the First Surcharge Motion to this Panel. On December 29, 2006, the Panel reversed the bankruptcy court's order. The Panel acknowledged that Debtor had exhibited

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6. The quotation marks around "Lin of China" are also found in Debtor's declaration. Dkt. no. 100.

7. This is a quotation taken from the Panel's decision in *In re Law*, BAP nos. CC-05-1303/1334, at 7-8, and is attributed therein to the bankruptcy court's concluding remarks at the March 22, 2006 hearing. A transcript of that hearing is not included in the current record on appeal. We cite to the various unpublished memoranda involving Debtor under the doctrine of law of the case.

"misconduct, obstinance, blatant ignorance of court orders and directives, animosity toward the court and the trustee, and efforts to thwart administration of the case...." *In re Law,* BAP nos. CC–05–1303/1334, Memorandum at 17. Even so, the Panel reasoned that:

> Regardless of the debtor's tactics, it is apparent that the debtor was not abusing his exemptions and that the trustee was not seeking to remedy such abuse. Rather, the intent of the trustee was to punish the debtor for his tactics. The sort of extraordinary circumstances that would be a prerequisite to surcharge have not been demonstrated.
>
> Similarly, it is apparent that the court was merely shifting litigation expenses to the debtor in a fashion designed to punish the debtor for his litigation activity.

Id. Significantly, while reversing the surcharge order, the Panel expressed "no opinion whether specific instances of mischief by the debtor in the past might support [a future] surcharge against his exemption.... Any such relief to the trustee should be supported by specific findings of fact and appropriate conclusions of law regarding the debtor's conduct[.]" *Id.*

Trustee appealed the Panel's decision to the Ninth Circuit, which affirmed the Panel's decision. *In re Law,* 308 F. App'x 161.

In the meantime, on February 5, 2007, Debtor filed a motion for an order directing Trustee to pay him his claimed homestead exemption from the proceeds of the sale of the Property, and to sanction Trustee for his alleged bad faith in refusing to comply with the Panel's decision reversing the order approving the First Surcharge Motion. The bankruptcy court denied Debtor's motion at a hearing on February 28, 2007, on the grounds that it lacked jurisdiction to rule on distribution of the exemption proceeds while the order granting the First Surcharge Motion was on appeal to the court of appeals. Debtor, in turn, appealed this denial to the Panel, and the Panel reversed the bankruptcy court's decision on October 5, 2007.

The Panel held that, though an appeal to the court of appeals was pending, the bankruptcy court retained the authority to enforce a final judgment that had not been stayed or superseded. When Trustee did not timely oppose Debtor's homestead exemption claim, the exemption became final, and the bankruptcy court therefore had jurisdiction to authorize payment of the exemption, regardless of appeals on other matters. *In re Law,* BAP no. 07–1127, Memorandum at 10–11.

Nevertheless, in its decision the Panel again made it clear that, while it was ruling solely on the right of Debtor to an unopposed homestead exemption, such exemption might still be:

> subject to surcharge, based upon an appropriately supported motion filed by the

> trustee. Although a surcharge cannot be used to punish a debtor, *Onubah v. Zamora (In re Onubah)*, 2007 WL 2701336 at *6 (9th Cir. BAP August 29, 2007), it may be used to prevent fraud, caused by the debtor's misconduct, upon the court and estate creditors, *Latman v. Burdette*, 366 F.3d 774, 785 (9th Cir. 2004).... The trustee may renew his motion to surcharge the debtor's claimed homeowner's exemption, as long as appropriate factual and legal bases exist to justify such a surcharge under the standards set out in *Latman* and *Onubah*.

Id. at 11–12.

The Second Surcharge Motion

On April 24, 2008, Trustee filed another Motion to Surcharge Debtor's Homestead Exemption (the "Second Surcharge Motion"). The Second Surcharge Motion alleged, among other issues, that (1) the second deed of trust on the Property was fictitious and fraudulent, intended by Debtor to falsely encumber the Property so as to discourage its sale as part of a scheme by Debtor to defraud his creditors; (2) Debtor had perjured himself twice, once by listing the second deed of trust in his schedules, and again in knowingly attaching a fraudulent promissory note to his motion to reconsider the order approving sale of the Property; and (3) Debtor created a "Lili Lin of China" who either did not exist or, if she did exist, had no interest in the Property, in furtherance of his efforts to frustrate Trustee's administration of the Property and to otherwise exhaust the assets of the estate.

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Debtor responded to the Second Surcharge Motion on May 7, 2008, generally denying its allegations and, alternatively, arguing that the BAP's decision on the First Surcharge Motion was res judicata, barring consideration of the Second Surcharge Motion by the bankruptcy court.

On May 28, 2008, Trustee served a Notice of Deposition and Request for Production of Documents on Debtor regarding the Second Surcharge Motion. There followed an extensive discovery dispute between the parties, with Debtor generally refusing to cooperate with Trustee. Trustee and Debtor submitted a summary of the dispute to the bankruptcy court in a stipulation dated July 3–8, 2008. Trustee argued that he had the right to depose Debtor and to demand that he produce documents in a contested matter pursuant to Rules 7028–7037. Debtor countered that Trustee could have conducted the deposition years before and was only now deposing him for purposes of harassment. Additionally, Debtor argued that the requested production of documents would cost in excess of $3,000, and Debtor demanded that Trustee pay this in advance.

On July 8, 2008, Trustee submitted a Motion to Compel Debtor's Attendance at Deposition and Production of Documents and requested sanctions against Debtor of $3,520, payable to Trustee. On July 20, 2008, Debtor advised Trustee that he would agree to be deposed on July 28, 2008. However, Trustee informed Debtor that his consent had come too late, insofar as Trustee had filed the Motion to Compel. However, Trustee agreed to allow the deposition to go forward if Debtor compensated Trustee for the costs of bringing the Motion to Compel.

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In an apparent rejection of Trustee's offer, Debtor filed an opposition to the Motion to Compel on August 5, 2008, arguing that Trustee was harassing Debtor and acting in bad faith.

The bankruptcy court scheduled a hearing on the Motion to Compel on August 20, 2008, but indicated in a tentative ruling that appearances were not required. The tentative ruling provided that the court was inclined to grant Trustee's motion and to impose sanctions upon Debtor. There were no appearances at the hearing and, on August 28, 2008, the bankruptcy court entered its order directing Debtor to appear at a deposition and provide access to Trustee to the required documents. The order imposed monetary sanctions of $3,520 on Debtor.

On November 5, 2008, the bankruptcy court conducted a hearing on the Second Surcharge Motion. Trustee was represented by counsel and Debtor appeared pro se. At the conclusion of this hearing, the bankruptcy court announced its oral ruling in favor of Trustee. Hr'g Tr. 17:18–37:5 (November 5, 2008). The court later memorialized its decision in a Memorandum Decision entered on February 20, 2009. In granting the Second Surcharge Motion, the bankruptcy court found that Debtor had attempted to perpetrate a fiction and fraud on the court:

> This utter absence of credible, persuasive evidence, taken in the context of (1) Debtor's demonstrated willingness to deceive this court by filing a false document—that is,

the "birth date" promissory note;[8] (2) the myriad suspicious circumstances surrounding the disputed second deed of trust and Lili Lin of China's pleadings; (3) the inconsistencies in Debtor's statements regarding the loan proceeds; and (4) the Lili Lin of Artesia "foreclosure" episode,[9] leads me to conclude

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8. The bankruptcy court found that Debtor had prepared two almost identical promissory notes in June 1999, in an attempt to document the alleged loan of $168,000 secured by the second deed of trust on the Property. One note included a birth date of Lili Lin of November 22, 1947, while the other had no birth date. The court found that Debtor could not explain why he prepared and notarized two inconsistent documents.

> The second deed of trust was recorded on June 28, 1999. Attached to the filed copy was the promissory note without the birth date. Los Angeles County Recorder's Office No. 9901179298. On February 19, 2006, Debtor and "Lili Lin of China" filed an opposition to the sale of the Property. Attached to Debtor's opposition as Exhibit F was a copy of the promissory note that Debtor asserted had been filed with the Los Angeles County Recorder's Office. However, this promissory note contained the birth date, which was that of the person Debtor represented to the bankruptcy court as Lili Lin of China.
>
> In this regard, the bankruptcy court concluded that Debtor had submitted false evidence to the court.

9. At the hearing, the bankruptcy court heard testimony from a woman named Lili Lin of Artesia. She stated she was an acquaintance of Debtor but had never loaned money to Debtor. Lin of Artesia testified that Debtor gave her a copy of the second deed of trust and promissory note, asking that she accept a check

> that no person named Lili Lin ever made a loan to Debtor in exchange for the disputed deed of trust on Debtor's residence. The preponderance of the evidence clearly shows that the loan was a fiction, meant to preserve Debtor's equity in his residence beyond what he was entitled to exempt as a homeowner, and a fraud on his creditors and the court.

The bankruptcy court also heard testimony from Debtor. The court made a determination that Lin of Artesia was more credible. Based upon the evidence, the bankruptcy court concluded that Debtor concocted the second deed of trust in order to protect his equity from a judgment creditor, and then attempted to recover the protected equity by a sham transfer to his ex-wife.

The bankruptcy court determined that, had Debtor not invented the second deed of trust and persisted in his misrepresentations to the court, ample funds would have been available in the bankruptcy case to pay Debtor's creditors and Trustee's costs, pay Debtor his full homestead exemption, and to return surplus funds to Debtor. However, as a result of the disputes over

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from him for $168,000 in "payment" of the loan, and then to return the money to him. Lin of Artesia refused. In February 2000, Los Angeles County Records Research received a letter purportedly from Lin of Artesia, although she says she never sent it. The letter sought to initiate foreclosure proceedings against the Property. At the same time, Lin of Artesia received documents from Debtor, including an assignment of the promissory note to Connie Chang, the debtor's ex-wife.

the fictitious second deed of trust, the court found that Trustee and the estate had incurred $456,112.50 in legal fees, an amount considerably in excess of Debtor's $75,000 homestead exemption, all of which were the direct result of Debtor's active misrepresentations to Trustee and to the court. Based upon its findings, the bankruptcy court concluded that:

> were Debtor to receive his homestead exemption, the financial consequences of Debtor's misconduct would fall most heavily upon Debtor's creditors, including Trustee and his attorneys. A surcharge must be levied to avoid this outcome. Because the actual costs to the estate far exceed $75,000 (the exemption to which Debtor would otherwise be entitled), I find that Debtor's homestead must be surcharged in its entirety.

On February 20, 2009, the bankruptcy court entered its order granting the Second Surcharge Motion and surcharging Debtor's homestead in its entirety of $75,000. Debtor filed a timely appeal of the bankruptcy court's surcharge order and discovery sanction order on March 2, 2009.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(A), (B) and (O). We have jurisdiction under 28 U.S.C. § 158.

Appendix D

ISSUES

1. Did the bankruptcy court abuse its discretion in imposing a surcharge on Debtor's homestead exemption?

2. Did the bankruptcy court abuse its discretion in compelling Debtor to attend a deposition and imposing discovery sanctions on him?

STANDARDS OF REVIEW

A bankruptcy court's decision to invoke the equitable remedy of surcharge of a debtor's homestead exemption is reviewed for abuse of discretion. *Onubah v. Zamora (In re Onubah)*, 375 B.R. 549, 553 (9th Cir. BAP 2007). The findings of fact upon which a surcharge is based are reviewed for clear error, while the bankruptcy court's conclusions of law are reviewed de novo. *Kelley v. Locke (In re Kelley)*, 300 B.R. 11, 16 (9th Cir. BAP 2003).

The imposition of discovery sanctions is reviewed for abuse of discretion. *Freeman v. San Diego Ass'n of Realtors*, 322 F.3d 1133, 1156 (9th Cir. 2003).

A trial court abuses its discretion if it bases its decision on an erroneous view of the law or clearly erroneous factual findings. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990). To reverse for abuse of discretion we must have a definite and firm conviction that the bankruptcy court committed a clear error of judgment in the conclusion it reached. *Stasz v. Gonzalez (In re Stasz)*, 387 B.R. 271, 274 (9th Cir. BAP 2008).

Appendix D

DISCUSSION

I.

The bankruptcy court did not abuse its discretion in surcharging Debtor's homestead exemption.

The Bankruptcy Code does not expressly authorize surcharges against a debtor's exemptions. However, the Ninth Circuit has held that a bankruptcy court may equitably surcharge a debtor's statutory exemptions when reasonably necessary to protect the integrity of the bankruptcy process and to ensure that a debtor receives as exempt property an amount no more than what is permitted by the Bankruptcy Code. *Latman v. Burdette*, 366 F.3d 774, 786 (9th Cir. 2004).

In *Latman*, the bankruptcy court authorized a surcharge as a form of offset. The debtors had acted fraudulently in their bankruptcy case by intentionally failing to disclose certain assets, and the sale of those assets, in their schedules. When the trustee became aware of the assets and their sale, he sought an accounting from the debtors of the sale proceeds. When they refused to provide the accounting and turn over the sale proceeds, the trustee moved to surcharge the debtors' exemptions. *Latman*, 366 F.3d at 779. In affirming the decision to impose a surcharge, the Ninth Circuit held that the bankruptcy court did not act to "punish" the debtors by denying them the value of their exemption. Rather, under the facts, the surcharge remedy fashioned by the bankruptcy court was intended to prevent what would

otherwise have been a fraud on the bankruptcy court and the Latmans' creditors. *Id.* at 787.

This Panel has also endorsed use of an exemption surcharge. In *In re Onubah*, the Panel applied the holding in *Latman* in an appeal from a surcharge of a homeowner's exemption. 375 B.R. at 553–58. In *Onubah*, the debtor claimed a $75,000 homestead exemption. The trustee arranged for a sale of the residence, which would generate $96,000 for the bankruptcy estate. While the debtor did not oppose the sale, he later attempted to block the sale by refusing to vacate the residence. The trustee was then forced to prosecute a motion for turnover. On the day the turnover motion was to be heard by the bankruptcy court, the debtor caused the case to be converted from chapter 7 to chapter 11. When the debtor was unable to explain to the bankruptcy court any legitimate purpose for the conversion, the trustee was able to obtain an order reconverting the case to chapter 7 and granting the turnover motion. But when the U.S. Marshal attempted to enforce the turnover order, the debtor informed him that an involuntary bankruptcy had been filed against him in another bankruptcy court, staying the sale. The trustee was thus forced to seek reassignment of the involuntary case to the bankruptcy judge presiding over the chapter 7 voluntary case so the sale could proceed. Ultimately, the bankruptcy court determined that the debtor had colluded with the involuntary petitioners in an effort to prevent the sale and to obstruct the trustee's administration of the estate.

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In *Onubah*, the debtor's obstructionist and fraudulent conduct caused the trustee to expend over $50,000 of estate funds. The trustee filed a motion to surcharge the debtor's homestead exemption to recover the expense. The bankruptcy court granted the motion.

On appeal, the Panel affirmed, agreeing that the debtor's inequitable conduct was not undertaken in good faith. *In re Onubah*, 375 B.R. at 554. The Panel explained that while *Latman* involved a case where the debtors had concealed assets, the surcharge remedy may be applied in other exceptional circumstances, too. For example, surcharge can be utilized where a debtor "abused the processes of the bankruptcy court" or where the debtor's "efforts at obstruction were not litigation tactics undertaken in good faith." *Id.* at 554. Citing a prior decision, the Panel observed that a debtor's conduct resulting in "prejudice to the estate or to the creditors causing actual economic loss may be the basis for the disallowance of an exemption, or conditioning its allowance on the debtor purging the effect of his prejudicial conduct." *Id.* at 555–56 (*citing Arnold v. Gill (In re Arnold)*, 252 B.R. 778, 788–89 (9th Cir. BAP 2000)). Noting that while a "surcharge may not be used to shift costs to a debtor who has unsuccessfully, but in good faith, opposed a trustee's effort to liquidate [assets] or who has otherwise challenged the trustee's administration of the estate [...,]" it is proper to impose a surcharge where required "to compensate the estate for the actual damage inflicted by [a debtor's] misconduct." *Id.* at 556.

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Taken together, *Latman* and *Onubah* stand for the proposition that a surcharge of a debtor's exemptions is appropriate only in "exceptional circumstances." *Latman*, 366 F.3d at 786.[10] However, those exceptional circumstances justifying a surcharge exist when a debtor engages in inequitable or fraudulent conduct that, when left unchallenged, denies creditors access to property in excess of that which is properly exempted under the Bankruptcy Code. *Latman*, 366 F.3d at 786; *In re Onubah*, 376 B.R. at 554.

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10. Our concurring colleague, while acknowledging it applies under these facts, opines that the Ninth Circuit's decision in *Latman* is no longer "good policy" and describes the court's holding as an "outlier." Admittedly, the Tenth Circuit declined to follow *Latman* in *Scrivner v. Mashburn (In re Scrivner)*, 535 F.3d 1258 (10th Cir. 2008). Notably, it reversed that circuit's BAP in doing so, which expressly endorsed the merits of *Latman's* approach. *See Scrivner v. Mashburn (In re Scrivner)*, 370 B.R. 346, 352–354 (10th Cir. BAP 2007). *Latman* teaches that exemption surcharges should not be employed to punish debtors who vigorously, but unsuccessfully, litigate their interests in bankruptcy cases, restricting the use of the bankruptcy court's § 105(a) equitable powers in this context to "exceptional circumstances" where debtors have attempted to abuse or manipulate the bankruptcy system at their creditors' expense. Given these parameters, we disagree with the Tenth Circuit's conclusion that § 105(a) powers are unavailable to compensate for debtor fraud. Moreover, the advent of Rule 4003(b)(2) does not change this analysis. That rule provides a procedure, and establishes a time limit, for challenging the validity of a debtor's exemptions; it does not address situations where an exemption is claimed and allowed, but due to a debtor's bad conduct during the case, ought to be surcharged. Read fairly, the rule does not limit the scope of a bankruptcy court's powers when confronted with debtor fraud. In short, we believe *Latman* is not only binding here, but that it was correctly decided.

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In this case, based upon an ample record, the bankruptcy court found Debtor had engaged in inequitable conduct, bad faith, and fraud on a truly egregious scale. As in *Onubah,* Debtor attempted to derail Trustee's sale of his house and the proper distribution of the sale proceeds. The bankruptcy court found that the Lili Lin of China second deed of trust was a fiction invented by Debtor, and that Debtor submitted a false document to the bankruptcy court, a promissory note that materially differed from the note filed with the Los Angeles County Recorder's Office, in an attempt to facilitate payment of the fictitious debt. Based on his many dealings with Debtor, the bankruptcy judge did not find credible Debtor's assertions that his submission of this document was accidental. This Panel gives special deference to credibility determinations made by the bankruptcy court. Rule 8013; *Anderson v. City of Bessemer City,* 470 U.S. 564, 573 (1985).

As in his other appeals, Debtor's position here is premised on the existence of a second deed of trust, supposedly granted to and owned by Lili Lin. Of course, had the second deed of trust existed, the total secured liens on the Property would have extinguished any equity in the Property, and Trustee would have had no reason to pursue the sale of the house.

The bankruptcy court heard testimony from Lili Lin of Artesia and Debtor concerning Debtor's attempts to construct a fraudulent second deed of trust to protect his equity from a judgment creditor, and then his attempt to recover the protected equity by a sham transfer from Lin of Artesia to his ex-wife. Lin of Artesia outlined Debtor's

scheme, and the bankruptcy court found her testimony credible and Debtor's testimony not credible. Again, we give deference to these credibility findings.

Debtor argues that the "real" Lili Lin was the Lili Lin of China. The Panel, in its decision reversing the First Surcharge Motion, indicated that the Lili Lin of China claim had to be addressed by Trustee and the bankruptcy court. The bankruptcy court did so directly, and dismissed out of hand the notion that such a creditor or claim existed.

> Lili Lin of China has never filed a proof of claim in this case. Any pleading that she has filed in this case has proved to be a forgery, fictitious, nor worthy of consideration. And although I've given Lili Lin of China every opportunity that I'm capable of according to her, ... no lawyer speaking on behalf of the purported Lili Lin of China has come forth with plausible evidence, credible evidence, useful evidence, persuasive evidence. The claim of Lili Lin of China simply does not exist.

Hr'g Tr. 33:4–19 (November 5, 2008). The bankruptcy court succinctly summarized its findings regarding Lili Lin of China in its Memorandum Decision:

> No person named Lili Lin ever made a loan to Debtor in exchange for the disputed deed of trust on Debtor's residence. The preponderance

> of the evidence [11] clearly shows that the loan was a fiction, meant to preserve Debtor's equity in his residence beyond what he was entitled to exempt as a homeowner, and a fraud on his creditors and the court.

Given this record, the bankruptcy court did not clearly err in finding that the second trust deed loan was a fiction intended by Debtor as a fraud on the court. Based upon the evidence and testimony, the court found that Debtor submitted a false document to support the Lin of China secured claim; there were numerous, suspicious circumstances surrounding the second deed of trust; there were inconsistencies in Debtor's statements about the loan proceeds; and Debtor attempted to create a sham transaction through Lin of Artesia.

Based upon these factual findings, the bankruptcy court did not abuse its discretion in deciding to impose an equitable surcharge on Debtor's homestead exemption.

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11. Although Debtor has not argued that the court erred in this regard, we note that the bankruptcy court correctly identified and applied the burden of proof concerning Trustee's surcharge motion. As in all exemption disputes, Trustee had the burden of proving that Debtor was not entitled to a portion of a claimed exemption. Rule 4003(c) ("the objecting party has the burden of proving that the exemptions are not properly claimed."). This burden may be satisfied by a preponderance of the evidence. *See Gillman v. Ford (In re Ford)*, 492 F.3d 1148, 1155 (10th Cir. 2007) ("If the trustee fails to carry the burden of proving by a preponderance of the evidence that the exemption should be disallowed, the exemption will stand.") (quoting *In re Ciotta*, 222 B.R. 626, 629 (Bankr. C.D. Cal. 1998)).

Had it not done so, Debtor's scheme may have succeeded in frustrating Trustee's efforts to generate funds from the sale of the Property for the benefit of Debtor's creditors. To protect the integrity of the bankruptcy system, and to prevent Debtor from reaping a benefit from his actions to the prejudice of his creditors, the bankruptcy court was justified in deciding that Debtor not receive his homestead exemption under these facts.

Even so, Debtor argues that, based upon the Panel's decisions in his prior appeals, res judicata precluded relitigation of whether Debtor's homestead exemption could be surcharged in the Second Surcharge Motion. While preclusion prevents relitigating the issues of fact or law necessary to support a judgment, preclusive effect should be denied to judgments and orders that are, by their terms, tentative. RESTATEMENT (SECOND) OF JUDGMENTS § 13; Christopher Klein, Lawrence Ponoroff & Sarah Borrey, *Principles of Preclusion and Estoppel in Bankruptcy Cases*, 79 AM. BANKR. L.J. 839, 854 (2005). Here, the Panel twice stated in its prior decisions the tentative nature of its rulings regarding whether Debtor's homestead exemption could, upon a proper factual showing, be surcharged. In reversing the First Surcharge Motion, the Panel observed that the Trustee "could seek further monetary sanctions, including a surcharge against exemptions." Then, in its decision reversing the bankruptcy court's order denying Debtor's motion for an order directing Trustee to pay Debtor's homestead exemption, the Panel noted that, even though Debtor "is entitled to his claimed homestead exemption, it still might be subject to surcharge, based on

an appropriately supported motion filed by the trustee." *Law v. Siegel*, BAP no. CC–07–1127, Memorandum at 11–12.

We conclude that the previous decisions of the Panel reversing the bankruptcy court's order on the First Surcharge Motion and the order denying Debtor's motion to pay the claimed homestead exemption were tentative as to the question whether the exemption might be subject to surcharge such that Trustee was not precluded from seeking a surcharge exemption in the Second Surcharge Motion.

II.

The bankruptcy court did not abuse its discretion in compelling Debtor to attend a deposition and imposing discovery sanctions.

Debtor also appeals the bankruptcy court's order compelling him to attend a deposition in connection with the Second Surcharge Motion, and imposing monetary sanctions against him for failure to cooperate in discovery, on several grounds.[12] Debtor first argues that Trustee had

12. In addressing Debtor's second issue on appeal, we acknowledge the objection of Trustee that an order concerning discovery is, usually, interlocutory and not appealable. *Church of Scientology v. United States*, 113 St. Ct. 447, 452 n.11 (1992). The discovery order at issue here, though, and the monetary sanctions imposed on Debtor, were directly related to the Second Surcharge Motion. The bankruptcy court's order granting the Second Surcharge Motion was a final judgment disposing of the

ample opportunity to take his deposition years earlier, such that he should not have been ordered to submit to deposition later. Second, Debtor insists that Trustee's demand that he appear at a deposition and produce documents was intended to harass Debtor. Finally, Debtor contends that production of the documents requested by Trustee would cost $3,000, and Debtor should not be required to provide the documents unless Trustee paid this sum in advance. None of these contentions has merit.

Under the Rules, the Second Surcharge Motion was a contested matter. Rule 9014(a). Rule 9014(c) provides that, unless the bankruptcy court orders otherwise, the discovery procedures set forth in Rules 7028–7037, which effectively incorporate Civil Rules 28–37, are available to the parties in a contested matter. Depositions of parties may be taken without leave of court under Rule 7030 and Civil Rule 30, and the production of documents may be sought under Rule 7034 and Civil Rule 34. *See In re Sundridge Assocs.*, 202 B.R. 761 (E.D. Cal. 1996) (production of documents in connection with a contested matter can be compelled under Rule 7034).

Nothing in the record supports the notion that Trustee, in seeking discovery from Debtor, was motivated by any desire to harass him. Indeed, the Panel's decision

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dispute between Trustee and Debtor concerning the surcharge of the homestead exemption. An interlocutory order, such as this discovery and sanctions order entered as part of the surcharge motion dispute, merges with the final judgment and may be challenged in an appeal of that judgment. *Baldwin v. Redwood City*, 540 F.2d 1360, 1364 (9th Cir. 1976).

regarding the First Surcharge Motion made clear that Trustee would be expected to support any subsequent request for a surcharge of Debtor's exemptions with appropriate and adequate facts and evidence. It appears that Trustee was endeavoring to discover facts relevant to the Second Surcharge Motion.

Moreover, nothing in Rule 7034 requires Debtor to provide the documents demanded by Trustee at Debtor's expense. Instead, the Rule requires only that the documents be produced by Debtor; it was Trustee's responsibility, if he chose to do so, to reproduce copies of the documents at the expense of the estate.[13]

Lastly, Debtor argues that sanctions should not have been imposed upon him by the bankruptcy court because he agreed in good faith to participate in the deposition. Trustee correctly notes that Civil Rule 37(a)(5)(A), incorporated in Rule 7037, states that if the motion to compel is granted (which occurred here) or if the requested discovery is only provided after the motion to compel is filed (which occurred here) "the court *must*, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the

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13. "A party may serve on any other party a request within the scope of Rule 26(b): (1) to produce and permit the requesting party to inspect, copy, test or sample ... items in the responding party's possession, custody or control[.]." Civil Rule 34(a)(1), incorporated in Rule 7034 (emphasis added); *Ares-Serono, Inc. v. Organon Int'l*, 151 F.R.D. 215, 220 (S.D.N.Y. 1993) (party seeking documents under Civil Rule 34 is responsible for expense of copying).

party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." (Emphasis added.) The record indicates that Trustee complied with the requirements of this rule in that he attempted in good faith to obtain the discovery without judicial intervention. The bankruptcy court provided Debtor an opportunity to be heard on the sanctions motion but Debtor did not attend the hearing.

The sanction imposed by the bankruptcy court of $3,520 was supported and adequately documented by Trustee's declaration of expenses related to the motion to compel. We conclude that the bankruptcy court did not abuse its discretion in compelling Debtor to attend the deposition and produce documents, and imposing compensatory monetary sanctions for Debtor's failure to comply.

CONCLUSION

We AFFIRM the orders of the bankruptcy court.

MARKELL, Bankruptcy Judge, concurring:

I concur. While there is nothing wrong with the panel's application of *Latman v. Burdette*, 366 F.3d 774 (9th Cir. 2004), I question whether *Latman* remains good policy. As an initial matter, since *Latman* was decided, no other federal appellate court has adopted it. *See Scrivner v. Mashburn (In re Scrivner)*, 535 F.3d 1258, 1263–65 (10th Cir. 2008); *Mazon v. Tardif (In re Mazon)*, 395

B.R. 742, 748–50 (M.D. Fla. 2008) (following *Scrivner*). A leading treatise has also noted *Latman's* outlier status. 2 COLLIER ON BANKRUPTCY ¶ 105.02[5][b] at p.130 (Henry J. Sommer & Alan Resnick, eds., 16th ed. 2009)

Further, in 2008, after *Latman* and *Onubah v. Zamora (In re Onubah)*, 375 B.R. 549 (9th Cir. BAP 2007) were decided, the Federal Rules of Bankruptcy Procedure were amended to address fraudulently asserted exemptions. Rule 4003(b)(2) now allows the bankruptcy trustee to challenge fraudulently asserted exemptions for up to one year after a debtor's case is closed. Fed. R. Bankr.P. 4003(b)(2). As this addition specifically addresses the consequences of fraudulently asserted exemptions, I question whether Latman's reliance on Section 105(a)'s residual equitable powers can continue to justify imposing a surcharge in the absence of any specific statutory authority.

But *Latman* still binds. I thus concur in the panel's application of *Latman* to these facts.

APPENDIX E — MEMORANDUM DECISION REGARDING TRUSTEE'S MOTION TO SURCHARGE DEBTOR'S HOMESTEAD EXEMPTION OF THE UNITED STATES BANKRUPTCY COURT, C.D. CALIFORNIA, DATED FEBRUARY 20, 2009

United States Bankruptcy Court,
C.D. California.

In re Stephen LAW,

Debtor.

No. LA–04–10052–TD.

Feb. 20, 2009.

MEMORANDUM DECISION REGARDING TRUSTEE'S MOTION TO SURCHARGE DEBTOR'S HOMESTEAD EXEMPTION

THOMAS A. DONOVAN, Bankruptcy Judge.

Trustee's Renewed Motion to Surcharge Debtor's Homestead Exemption ("Motion") was heard by this court on November 5, 2008 at 10:30 a.m. Steven T. Gubner appeared on behalf of Alfred H. Siegel, chapter 7 trustee ("Trustee") of the bankruptcy estate of Stephen Law ("Debtor"). Debtor appeared *in pro per.* All papers have been filed and this matter is now ripe for resolution.

Having carefully considered the briefs, pleadings, declarations, and exhibits filed in support of, and in

opposition to, the Trustee's Motion, and all of the filings in this bankruptcy case and in the related adversary proceedings on file, I conclude that a surcharge of the Debtor's homestead exemption by $75,000 is proper. My reasons are as follows.[1]

Procedural Posture

On December 29, 2006, the Bankruptcy Appellate Panel ("BAP") entered a memorandum of decision reversing my earlier order, entered on May 8, 2006, surcharging Debtor's homestead exemption on Trustee's earlier motion. The BAP concluded that the surcharge was improper because no extraordinary circumstances had been established justifying the surcharge, and because it appeared to the BAP that "the intent of the trustee was to punish the debtor for his tactics." The BAP decision left open the possibility of a future order surcharging Debtor's homestead exemption if the order was "supported by specific findings of fact and appropriate conclusions of law ... including an adequate explanation why any surcharge based on specific damages or expenses incurred by the estate should be reimbursed from the debtor's exemptions." The Ninth Circuit recently affirmed the BAP's decision. The following comprises my findings of fact and conclusions of law on the Trustee's Renewed Motion.

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1. To assist the reader in navigating the extensive dockets in this bankruptcy case and its related adversaries, I cite wherever possible to the exhibits (numbered 1 through 54) that are attached to Trustee's Motion and Supplemental Memorandum of Points and Authorities.

Appendix E

Applicable Legal Standard

A court may surcharge a debtor's claimed exemption "when reasonably necessary both to protect the integrity of the bankruptcy process and to ensure that a debtor exempts an amount no greater than what is permitted by the exemption scheme of the Bankruptcy Code." *Latman v. Burdette*, 366 F.3d 774, 786 (9th Cir. 2004). Such a surcharge is justified where a debtor's misconduct amounts to a fraud on the court and the debtor's creditors. *In re Onubah*, 375 B.R. 549, 554 (9th Cir. BAP 2007). A surcharge must be calculated to compensate the estate for the actual damage inflicted by a debtor's misconduct. *Id.* at 556. The remedy of surcharge cannot "be used to shift costs to a debtor who has unsuccessfully, but in good faith ... challenged the trustee's administration of the estate." *Id.* Attorneys' fees may be awarded as part of a surcharge if the debtor's conduct causes "the estate to incur unnecessary expenses ... and without the award the estate would not have been made whole." *Id.*

Summary of My Findings and Conclusions

On January 5, 2004, Debtor filed his chapter 7 petition. The only significant asset of the bankruptcy estate was Debtor's residence, which was encumbered by two deeds of trust and three judgment liens. The second deed of trust, supported by a purported $168,000 personal loan from a woman named Lili Lin, has been the subject of a bitter controversy between Debtor and Trustee. This dispute has consumed nearly five years and hundreds of thousands of dollars in lawyers' time, as documented

in the Trustee's lawyers' still pending preliminary fee application, filed on March 10, 2008. For reasons set forth more fully below, I am persuaded—based on a preponderance of the evidence before me—that the loan was fabricated by Debtor in an attempt to preserve equity in his residence and defeat the collection efforts of his judgment creditors. In response to Trustee's challenge to (1) the second deed of trust, as asserted primarily by Debtor, with intermittent, questionable, and unpersuasive support purportedly offered by a woman named Lili Lin of China, and (2) Debtor's homestead claim, I conclude that Debtor's assertions concerning the second deed of trust have not been proved by a preponderance of the evidence and that the Trustee's surcharge request has been substantiated by the evidence.

The Purported Lili Lin Loan

To support his claims concerning the second deed of trust (the "disputed deed of trust"), Debtor asserts that in 1998 he received a loan of $168,000 from a woman named Lili Lin.[2] During the nearly five years since his bankruptcy filing, Debtor has not produced any persuasive evidence that he actually received such a loan. Moreover, the evidence he *has* produced is inconsistent, supporting an inference that no such loan was made. For instance, at his meeting of creditors, Debtor stated under oath that the proceeds of the Lili Lin loan were not deposited in a bank account, but rather were paid directly to his creditors, and

2. Ex. 12, 134: 10–12 (2005).

that Debtor possessed receipts reflecting this.[3] Since then, he has never produced receipts reflecting such payments. He later claimed that the funds were *not* paid directly to creditors, but were wired into his bank account;[4] but the bank statements he offered in support of this claim do not prove by credible or persuasive admissible evidence that he received such a loan or that any such sum as $168,000 came from a woman named Lili Lin.[5] These inconsistencies lead me to disbelieve all of Debtor's assertions regarding the disputed deed of trust: It strains credulity to imagine that Debtor would not have a clear recollection of the form in which he received a $168,000 personal loan, or that in the elapsed time of this 2004 bankruptcy case Debtor has been unable to produce persuasive, credible evidence substantiating the loan in response to Trustee's discovery requests, motions, or otherwise.

In June of 1999, a year after the purported loan was made, Debtor executed and had notarized two separate promissory notes,[6] both, apparently, to document the same alleged loan. Both of the notes were issued, purportedly, in favor of someone named Lili Lin. One of the notes identified Lili Lin's birth date as November 22, 1947; the other contained no birth date. Debtor has not provided a credible explanation as to why he prepared and signed two separate promissory notes, one with the obligee's date

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3. Ex. 43, 588–89 (2004).

4. Ex. 20, 293: 6–12 (2006).

5. Ex. 42, 563–64 (2008).

6. Ex. 42, 570–76 (2008).

of birth and one without.[7] Also in June of 1999, Debtor executed and had notarized a deed of trust in favor of Lili Lin ("the disputed deed of trust"), which was recorded on June 28, 1999.[8] Attached to the recorded deed was one of the two promissory notes—the one that did not include Lili Lin's birth date.[9] Significantly, at the time the disputed deed of trust was recorded, an action titled *Cau–Min Li v. Law* was pending against the Debtor in the Los Angeles Superior Court.[10] A resulting judgment of $131,821.74 was entered against Debtor in October of 1999, just four months after the Lili Lin deed was recorded.[11] Given the substantial lapse of time between the purported loan and its recordation, it seems likely that the disputed deed of trust was recorded in anticipation of the impending Li judgment.

A woman named Lili Lin, who lives in Artesia, California, ("Lili Lin of Artesia") was an acquaintance of Debtor at this time. In June of 1999, Debtor delivered to Lili Lin of Artesia a copy of the disputed deed of trust and promissory note.[12] He did so despite the fact that

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7. Ex. 48, 156–72 (2008).

8. Ex. 2 (2004).

9. *Id.*

10. Li was suing Debtor for malicious prosecution. Ex. 43, 585 (2004).

11. Ex. 3 (1999).

12. Supplemental Request for Judicial Notice in Support of Trustee's Motion to Surcharge Debtor's Homestead Exemption, Ex. 1, 5: 12–17 (2005).

Lili Lin of Artesia had never loaned Debtor any money.[13] Debtor later asked Lili Lin of Artesia to accept a check from him for $168,000, in satisfaction of the "loan," and to then return the money to him.[14] Lili Lin of Artesia refused to do this.[15]

In February 2000, County Records Research received an unsigned letter, purportedly from Lili Lin of Artesia.[16] The letter, which Lili Lin of Artesia says she did not send, sought to institute foreclosure proceedings on Debtor's residence. Around the same time, Lili Lin of Artesia received the following documents in the mail: (1) Assignment of Promissory Note Assigning the Promissory Note from Lili Lin [of Artesia] to Connie Chang; (2) Notice of Default and Election to Sell Under Deed of Trust; (3) Substitution of Trustee; (4) Declaration of Default and Demand for Sale.[17] Included with them was an unsigned note asking her to sign the documents.[18]

If Lili Lin of Artesia had signed and delivered the documents, as requested, she would have (1) assigned her interest in the promissory note, if any, to Connie Chang, who is Debtor's ex-wife; (2) substituted County Records

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13. *Id.* at 5: 7–11.

14. *Id.* at 45–46.

15. *Id.*

16. Ex. 45, 19 (2007).

17. Supplemental Request for Judicial Notice in Support of Trustee's Motion to Surcharge Debtor's Homestead Exemption, Ex. 1, 5: 17–28 (2005).

18. *Id.* at 6: 2–8.

Research as the trustee under the disputed deed of trust; and (3) authorized County Records Research to foreclose on Debtor's residence. On or about March 23, 2000, Lili Lin of Artesia received further correspondence from County Records Research repeating the request that she sign the documents.[19] She did not sign the documents. These circumstances, as proved by Trustee, strongly suggest to me that Debtor created the lien of the disputed deed of trust on his home in order to protect his equity from a judgment creditor, and then attempted to recover the protected equity via a sham transfer to his ex-wife.[20]

When Debtor filed his bankruptcy petition in 2004, he listed the now disputed deed of trust in favor of Lin's Mortgage & Associates [of Guangzhou, China] in his schedules. Trustee filed an adversary proceeding asserting fraud against Lili Lin in June of 2004,[21] seeking to avoid and recover the disputed deed of trust. Shortly

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19. *Id.* at 6: 9–13.

20. Debtor maintains that Lili Lin of Artesia was attempting to hold herself out as the beneficiary under the disputed trust deed in retaliation for a small claim lawsuit he filed against her. The lawsuit, however, was filed after the attempted foreclosure and Lili Lin of Artesia's rejection of the scheme. *See* Ex. 12, 137 (2005) (showing that lawsuit was filed on June 21, 2000). *See also* Supplemental Request for Judicial Notice in Support of Trustee's Motion to Surcharge Debtor's Homestead Exemption, Ex. 1, 5: 12–28 (2005) (showing foreclosure attempt began in February of 2000). In light of this, and upon weighing the credibility of the two witnesses, I find Lili Lin of Artesia's account to be the more credible one.

21. Adv. No. 04–01969.

thereafter, in his opposition to Trustee's motion for default judgment, Debtor asserted that he had in fact received the $168,000 loan from a *different woman named Lili Lin* ("Lili Lin of China")—a woman who lives in China and speaks no English. Lili Lin of China's birthday purportedly is November 22, 1947.[22] This is the date written on the second promissory note—the note that was *not* recorded with the disputed deed of trust. Debtor asserted that Lili Lin of China had not been properly served. The court entered a default judgment in favor of Trustee on August 31, 2004. Lili Lin of China, represented in that adversary by attorney Peter Chow, filed a motion to set aside the default. The court set aside the default judgment on October 20, 2004.

Subsequently, each Lili Lin responded to the Trustee's adversary complaint. Lili Lin of China filed two answers, one by attorney Peter Chow (in 2004) and one *in pro per* (in 2005).[23] Lili Lin of Artesia resolved the adversary by entering into a stipulation for entry of judgment with Trustee. In the stipulated judgment, Lili Lin of Artesia acknowledged (1) that she had never made a loan to Debtor and (2) that Debtor had attempted to involve her in a sham foreclosure of the disputed deed of trust.

A judgment on the Lili Lin of Artesia stipulation was entered on May 18, 2005. On February 17, 2006, over Debtor's opposition, the court entered an order

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22. Ex. 42, 548 and 553 (2008).

23. On the answer filed *in pro per*, Lili Lin of China gave as her address an address in Rowland Heights, California. Ex. 11.

authorizing Trustee to sell the property.[24] Two days later, in a jointly signed motion, both Debtor and (purportedly) Lili Lin of China moved the court to reconsider the sale order.[25] The signature: "Lili Lin" is printed by hand, in English, on the same page as Debtor's signature. To the best of my recollection of this lengthy and tortuous record, no plausible explanation has been furnished as to how Lili Lin of China, who purportedly speaks only Chinese and is unable to travel to the United States, was able to sign this motion *on the same page as Debtor.* There is no evidence in the record that adequately explains how this may have occurred. Further, I note that only two days passed between the sale order and the filing of the motion to reconsider, very little time for Debtor to mail a signature page to China and receive a signed copy in return. Given that Lili Lin of China has not visited the United States since this bankruptcy case began, the most plausible inference is that Debtor signed Lili Lin of China's name himself, or asked someone else to sign it for him.

The exhibits attached to Debtor's, and purportedly Lili Lin of China's, motion for reconsideration further support an inference that Debtor was attempting to mislead and manipulate the court. The motion contains numerous exhibits meant to demonstrate that Lili Lin of China had an interest in Debtor's home and that she made a loan to Debtor. Exhibit F is the promissory note containing Lili Lin of China's birth date. Debtor asserted that this promissory note had been recorded with the Los

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24. Ex. 18 (2006).

25. Ex. 20 (2006).

Angeles County Recorder's Office as document number 99-1179298.[26] In fact, this version of the promissory note, the "birth date" note, never was recorded; the only recorded promissory note was the one that *did not* include Lili Lin's birth date. Debtor's protestations that he made an innocent mistake[27] in submitting the false promissory note to the court are unconvincing, given the degree to which this "mistake" advanced his cause. It is much more plausible that Debtor attached false evidence to his sale reconsideration motion in an effort to persuade the court that Lili Lin of China—rather than Lili Lin of Artesia—was the true holder of the lien on his residence, and I so find.

Remarkably, despite her inability to speak English and her frequent lack of representation, Lili Lin of China has managed to file with this court numerous motions, declarations, and appeals *in pro per*—all written in English, without record of translation. I note that (1) all of Lili Lin of China's filings are written in a style closely resembling Debtor's, (2) she invariably advocates the same positions as Debtor, and (3) she has used Debtor's address and another southern California address as her address for purposes of her filings.[28] While the court cannot say with certainty that Debtor authored, signed, and filed some or all of these papers purportedly filed by Lili Lin of China, this is the most plausible conclusion,

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26. Ex. 48, 46–62 (2008).

27. *Id.*

28. *See, e.g.*, Ex. 20, Ex. 11.

given the implausibility on the record before me of Lili Lin of China accomplishing these tasks herself. The totality of the evidence leaves me unpersuaded that Lili Lin of China signed or approved any declaration or pleading purporting to come from her either in this case or any associated adversary proceeding.

Whatever the explanation, neither Lili Lin of China nor Debtor has produced any credible, persuasive evidence that the disputed loan was made, despite years' worth of opportunities to do so. **This utter absence of credible, persuasive evidence, taken in the context of (1) Debtor's demonstrated willingness to deceive this court by filing a false document—that is, the "birth date" promissory note; (2) the myriad suspicious circumstances surrounding the disputed deed of trust and Lili Lin of China's pleadings; (3) the inconsistencies in Debtor's statements regarding the loan proceeds; and (4) the Lili Lin of Artesia "foreclosure" episode, leads me to conclude that no person named Lili Lin ever made a loan to Debtor in exchange for the disputed deed of trust on Debtor's residence. The preponderance of the evidence clearly shows that the loan was a fiction, meant to preserve Debtor's equity in his residence beyond what he was entitled to exempt as a homeowner, and a fraud on his creditors and the court.**

Administrative Costs Incurred by the Estate

Had Debtor not made up this loan and persisted in his misrepresentations to Trustee and the court, ample funds would have been available to pay Debtor's creditors and

Trustee's costs. Had the sale of Debtor's home proceeded in an orderly way, absent the disputes concerning Lili Lin of China's interest in the property, Debtor almost certainly would have received surplus funds from this bankruptcy estate in excess of his claimed homestead exemption. As a result of the dispute over the disputed deed of trust, however, Trustee has incurred more than $500,000 in attorneys' fees,[29] and it is unlikely that any funds will be available for creditors. The court has not yet decided whether it is appropriate to award Trustee all of the attorneys' fees he has requested. **Nevertheless, I find that the reasonable costs of coping with Debtor's deception far exceed $75,000, the exemption to which Debtor otherwise would be entitled.** Trustee's efforts to sell Debtor's residence alone required 317.50 hours, translating to $87,939 in requested attorneys' fees.[30] Trustee also spent 1,534.70 hours on fraud litigation concerning the Debtor and Lili Lin of China and in achieving, implementing, and defending the compromise with Lili Lin of Artesia against the Debtor's and Lili Lin of China's numerous unsuccessful appeals, translating to $456,112.50 in fees.[31] These costs, which greatly

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29. First Interim Fee Application, filed on March 10, 2008.

30. *Id.* at 10–11.

31. *Id.* at 13–16. The following appeals had to be defended by Trustee as a direct result of Debtor's false representations: BAP No. 05–1303—By Lili Lin [of China] of the Order Granting Compromise of Controversy Approving the Stipulated Judgment to Avoid and Recover the Comfort Lien. [Notice of Appeal filed July 18, 2005, Docket No. 56, adversary proceeding no. 2:04–ap–01969–TD.] BAP No. 05–1344—By the Debtor of the Order Granting

exceed $75,000, are a direct result of Debtor's active misrepresentations to Trustee and the court.

Turnover of Property [Notice of Appeal, bankruptcy case Docket No. 87.] BAP No. 06-1195—By the Debtor of the Order granting the Sale Motion. [Notice of Appeal, bankruptcy case Docket No. 130, and BAP Assignment of Case, bankruptcy case Docket No. 137.] BAP No. 06-1379—By the Debtor of the Order on Trustee's Continued Motion to Sell Real Property Free and Clear of Liens, Interests, and Encumbrances. [Notice of Appeal, bankruptcy case Docket No. 168.] BAP No. 06-1427—By the Debtor and Lili Lin [of China] of the Order Denying Motion for Reconsideration or Alternatively, Stay Pending Appeal on Order Granting Trustee's Motion to Approve Compromise of Controversy Approving the Agreement between the Trustee and creditors of the bankruptcy estate. [Notice of Appeal, bankruptcy case Docket No. 175.] BAP No. 07-1323 filed August 27, 2007—By Lili Lin [of China] and Debtor of Order Granting Trustee's Motion to Strike Lili Lin [of China]'s Answer to Complaint for Declaratory Relief. [Notice of Appeal, Docket No. 38, adversary proceeding no. 2:07-ap-01102-TD.] BAP No. 08-1231 filed September 8, 2008—By Debtor of the order ordering Debtor to appear at his deposition and produce documents. [Notice of Appeal, bankruptcy case Docket No. 294.] The following appeals were taken: Ninth Circuit No. 07-55194—By Debtor of the BAP's judgment affirming the bankruptcy court's order striking his answer and granting the trustee's motion for default judgment. Ninth Circuit No. 07-55200—By Debtor and Lili Lin [of China] of the BAP's order approving a compromise agreement. Ninth Circuit No. 07-55200—Trustee's cross appeal of the BAP's decision reversing the bankruptcy court's order granting Trustee's surcharge motion. Ninth Circuit No. 07-56239—By the Debtor of the BAP's order affirming the judgment of the bankruptcy court approving the compromise between Trustee and the judgment creditors and granting the sale motion. On January 14, 2009, the Ninth Circuit affirmed each of the BAP decisions.

Appendix E

Lili Lin of China's Claim

In its December 29, 2006 decision, the BAP noted that "if the trustee continues to contest the lien status of Lili Lin of China, it is incumbent upon the trustee to obtain an appropriate judicial determination eliminating her interest." The BAP also noted, in the context of Lili Lin of China's opposition to Trustee's proposed settlement with Lili Lin of Artesia, that "at oral argument, the trustee conceded that the rights of Lili Lin of China have not been judicially resolved," and attorney "Andrew Smyth represented to [the BAP panel] that he now represents Lili Lin of China and will proceed towards prompt judicial resolution and will accept service of process and other papers on behalf of Lili Lin of China."[32]

Apparently following the BAP's suggestion, the Trustee filed an adversary against Lili Lin of China on

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32. Andrew Smyth was the second lawyer to purportedly represent Lili Lin of China, after Peter Chow. As noted earlier, Peter Chow represented Lili Lin of China in adversary proceeding 04–01969. He also appeared briefly on Lili Lin of China's behalf in adversary proceeding 07–01102, the recent adversary initiated by Trustee apparently at the BAP's request. Chow went to China in late 2007, and while there he talked briefly to Lili Lin of China; however, shortly after that he declined to represent her or to accept service on her behalf. (It is unclear who paid Chow's fees.) The evidence that Chow submitted on behalf of Lili Lin of China, none of which convincingly demonstrates that a loan was made, is identical to evidence that Debtor and Lili Lin of China submitted with the earlier failed motion to reconsider the sale order. Ex. 42 (2008). The evidence consisted only of documents that were submitted previously by Lili Lin of China and/or her then attorney Andrew Smyth and/or Debtor.

February 8, 2007. The adversary turned out to be futile and was dismissed on April 22, 2008, at which point Lili Lin of China still had not been properly served. Smyth, the lawyer who represented that he would accept service and appear on Lili Lin of China's behalf (and did so), later openly acknowledged at an August 1, 2007 hearing that (1) he had never met the woman and had communicated with her only by email,[33] (2) he did not speak Chinese and was unable to procure from Debtor a phone number for Lili Lin of China, so that he could speak to her through his own translator,[34] (3) he doubted Lili Lin of China truly was asserting a claim in this case,[35] and (4) he entered his appearance on her behalf for a nominal sum of money—that is, less than $1,000—[36] apparently at the request of others, perhaps the Debtor and the Debtor's ex-wife, Connie Chang. In response to my Order to Show Cause and the Trustee's Motion for Sanctions, Smyth voluntarily withdrew from the adversary, apparently in recognition of the futility of further efforts on his part to be of assistance—this in spite of the fact that he had acknowledged to the BAP during oral argument that he would accept service of process should the Trustee bring an adversary against Lili Lin of China to challenge her claim.

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33. Continued Hearing Re Trustee's Motion for Order Consolidating Adversary Proceedings, 10:30 a.m. August 1, 2007, adversary proceeding 07-01102, 8: 16–25, 9: 4–10.

34. *Id.* at 13: 2–20.

35. *Id.* at 18: 12–13, 22: 9–11.

36. *Id.* at 15: 11–25, 16: 1–13.

Appendix E

With Lili Lin of China's appearance thus appearing to be a sham, the Trustee refused to undertake the burden and expense of properly serving Lili Lin of China in China or otherwise pursue thorough discovery against her so-called "claim." The fact remains that Lili Lin of China, in spite of numerous pleadings and efforts in her name, has never come forth, personally or in credible, authenticated writings, either to defend against the Trustee's lawsuit or to file or prosecute any satisfactory claim for relief in the bankruptcy case.

Conclusion

I conclude that Debtor's conduct as outlined above was fraudulent toward Debtor's creditors and the court. Trustee has expended more than 1,500 hours coping with Debtor's fictitious loan and fraudulent deed of trust, generating substantial attorneys' fees and depleting the estate. Were Debtor to receive his homestead exemption, the financial consequences of Debtor's misconduct would fall most heavily upon Debtor's creditors, including Trustee and his attorneys. A surcharge must be levied to avoid this outcome. Because the actual costs to the estate far exceed $75,000 (the exemption to which Debtor otherwise would be entitled), I find that Debtor's homestead must be surcharged in its entirety.

IT IS SO ORDERED.

APPENDIX F — TRANSCRIPT OF PROCEEDINGS OF THE UNITED STATES BANKRUPTCY COURT, CENTRAL DISTRICT OF CALIFORNIA, DATED NOVEMBER 5, 2008

[i] UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. LA04-10052-TD

Los Angeles, California
Wednesday, November 5, 2008
10:30 a.m.

In Re: STEPHEN LAW,

Debtor.

HRG RE DEBTOR'S MOTION FOR AN ORDER IMPOSING SANCTION ON TRUSTEE

HRG RE DEBTOR'S MOTION FOR AN ORDER TO PAY COSTS ON THE APPEAL

CONT'D HEARING RE TRUSTEE'S MOTION TO SURCHARGE DEBTOR'S HOMESTEAD EXEMPTION

CONT'D HEARING RE THIRD MOTION OF STEPHEN LAW FOR AN ORDER TO PAY DEBTOR'S HOMESTEAD EXEMPTION

TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE THOMAS DONOVAN UNITED STATES BANKRUPTCY JUDGE

Appendix F

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[1] LOS ANGELES, CALIFORNIA WEDNESDAY, NOVEMBER 5, 2008 10:30 A.M.

(Call to order of the Court.)

THE COURT: Stephen Law, number 15.

MR. LAW: Good morning, your Honor. Stephen Law.

THE COURT: Good morning.

MR. GUBNER: Good morning, your Honor. Steven Gubner and Richard Mann, Ezra, Brutkus and Gubner, on behalf of Al Siegel, Chapter 7 Trustee.

THE COURT: Thank you.

Unless somebody has something to add to the papers, that I need to hear right now, I'd ask you to take a seat and -- and I'm going to give you a tentative ruling. Excuse me a moment while I get my papers in order. There's quite a bit of paperwork here, most of it having to do with this case.

Number one, I'm going to overrule Mr. Law's evidentiary objections. Number two, I'm going to overrule Mr. Law's opposition to this motion. Number three, tentatively, I'm going to grant the trustee's motion.

And having said that, I'd like to put on the record this morning some of my thoughts about this. And at the end

of -- of giving you my thoughts on this, I'm going to ask the trustee to prepare and file proposed findings of fact and conclusions of law. I have some concerns about the [2] format and the content -- style of -- of what I'm asking you to do that I'll explain later on.

Mr. Law, you will also be free to file your proposed findings of fact and conclusions of law if you wish to disagree with the trustee's proposed findings and conclusions of law.

At the end of this process, whenever that is, which I hope will not be too far away, I'll issue probably a written decision one way or the other, either as findings of fact and conclusions of law or a written decision in memorandum form. Sometimes -- sometimes an itemization of the findings and conclusions is helpful I think to all concerned. Sometimes I find it easier to explain my ruling in narrative form rather than a finding and conclusion form.

My concern always is that the person who is on the losing end of the decision ought to be able to understand what I'm saying and where I'm coming from and inciting what I have to say. My concern also is, particularly in this case where virtually every order that I've issued has been the subject of an appeal, I can't ignore the fact that one or more appellate courts will probably be looking at whatever decision I issue in this case, whether it's oral, written or in the findings and conclusions format.

Essentially, what I conclude from reading the trustee's motion filed last spring, and then adjourned for

[3] purposes of the trustee's discovery, a process that was made somewhat difficult by Mr. Law's failure to comply with discovery notices and requests, necessitating a motion by the trustee to compel Mr. Law's cooperation with discovery and an order that I issued in September -- no, I issued before that, I think in August, compelling Mr. Law's cooperation. The trustee completed two days of deposition examination of Mr. Law and has lodged with the Court the original transcripts of those two days of deposition, which is what a proponent is supposed to do in a -- at this stage of the proceeding. And then, as part of the trustee's motion papers, has furnished me with copies that have been designated for use in connection with the trustee's motion, including all the exhibits that were the subject of discussion at the deposition.

So, on this motion, I now have collectively a pretty large quantity of exhibits. I think -- I forget the highest number, but I think were up in to the 60's in terms of exhibits. Some of those exhibits go back -- I know some of them go back four years, and it may be that some of them go back to the -- almost to the origin of this case in January 4, 2005.

The essential story that I glean from the trustee's evidence is that Mr. Law has been in this case, in spite of a statutory duty to cooperate with the trustee and [4] the administration of Mr. Law's Chapter 7 bankruptcy case. Mr. Law has been troublesome, evasive, quarrelsome and a -- a tough guy to handle. And as I say, for every hearing, Mr. Law -- and for every order, for every ruling, Mr. Law has had a request for a stay, all of which I've denied.

Requests -- for many of them, requests to disqualify me, which I have denied. Mr. Law has filed appeals from my orders. He has filed motions directly with the 9th Circuit Court of Appeals, seeking my disqualification. Those -- those motions by Mr. Law's attorney already have been turned down by any court that has received one so far as I'm aware. There have been -- at one time, we took a count of appeals and I think there were 11 appeals to the BAP, all of which came from Mr. Law I believe, and four appeals to the 9th Circuit, some of which came from Mr. Law and some of which came from the trustee, or at least one of which came from the trustee, maybe two, I don't know. I'm not sure, I'm never sure what happens at the appellate level until they issue a decision that I can read.

All those appeals have been -- have affirmed my orders with the exception of the order surcharging Mr. Law's homestead exemption, based on evidence furnished to me on the trustee's initial motion to surcharge Mr. Law's homestead exemption claim of $75,000. And in that decision, issued by the BAP some time ago, the BAP in general said, [5] after reversing the surcharge order, that that didn't mean that the trustee was not free to file another motion for surcharge. And it's suggested, the panel suggested that if the trustee were to do so, he should support the motion with evidence that would support a finding of extraordinary circumstances warranting the surcharge asserted by the trustee. The BAP panel, at one or another time, also commented in its decision disposing of other matters before the BAP, has said that if the trustee didn't file such a motion, properly supported by adequate evidence, that the trustee then might be ordered

to pay the homestead exemption claim of Mr. Law. And there's been litigation over the last year or two in this Court, concerning the BAP's suggestions and Mr. Law's desire for payment of his homestead claim and out of the proceeds of the -- from the sale of Mr. Law's home that the trustee is holding. And I guess I might add that in just about every motion that anybody files, Mr. Law's request and opposition to just about any motion is that whoever filed the motion should be sanctioned. I don't believe that a -- I think if there were to be a tally of sanctions, I think Mr. Law has been sanctioned a number of times for non-cooperation in discovery matters. Perhaps three times in the course of this case that I can recall. I don't think the trustee has been sanctioned in this case.

So here we are in late 2008, finally ready for a [6] ruling on the trustee's renewed motion for surcharge with a great deal of documentary evidence and supplemented by a careful examination of Mr. Law at his September 9 and September 10, 2008 deposition by the trustee's counsel. Mr. Law's answers to deposition questions continued the theme and the display of attitude on Mr. Law's part that is consistent with most of what Mr. Law has done in this case. Difficulty in answering the questions, argumentative answers, challenging answers, rather than simple, direct answers. In this case the trustee's counsel persisted in requesting direct, uncomplicated answers to the questions posed to Mr. Law and in many cases, after several pages of effort, the trustee's counsel was able to elicit a -- an answer to the question. There is one thing in the deposition evidence that I'm curious about, and I want to stop here and ask a question. Mr. Law was asked about -- to produce

documents. And Mr. Law's initial answer was, "why, I've got five boxes full of documents, probably 5,000 pages per box, a total of 25,000 pages. I think it's ridiculous and it's unfair to ask me to produce all this stuff." After a lengthy discussion in the deposition, it was agreed between Mr. Law and counsel for the trustee that the trustee was asking for specific things and wanted documents that were responsive to the specific inquires, which turned out, it seems, to be far fewer than 25,000 pages of material. [7] Then, later, Mr. Law was questioned about the Li Li Lin of Artesia, and Mr. Law's dealings with Li Li Lin of Artesia. It was discussed that Mr. Law had sued Li Li Lin for default under a lease of space in Mr. Law's home some time back. That Mr. Law had recovered an $800.00 judgment from Li Li Lin of Artesia. And the trustee's attorneys asked, "may we see the discovery documents that Mr. Law employed in that lawsuit, and again Mr. Law argued at some length, challenging the trustee's right to ask for such information, claiming that such information was a matter of public record, and the trustee and his attorneys could go and look it up for themselves if they wanted, et cetera. But that discussion ended with a -- I guess a promise on Mr. Law's part to furnish the specific documents that the trustee outlined and to do that promptly.

I didn't find anything -- A, I didn't receive a status report in connection with today's hearing. I did receive some supplemental pleadings but nothing in any supplemental pleading since our last hearing has shown me what the result of that request by the trustee was, and whether Mr. Law complied and what the -- the documentary results were.

Can you enlighten me on that?

MR. MANN: Yes, your Honor. Richard Mann. The -- Mr. Law did produce the documents at the second day of the [8] deposition I believe, and they were copied and returned to him -- maybe it was the first day, I don't recall. So, there's really no issue. There's nothing in them that is material.

THE COURT: Okay, thank you.

MR. MANN: Thank you.

MR. LAW: I think --

THE COURT: Mr. Law.

MR. LAW: Yeah, I think the last day on the deposition, the trustee -- I mean I bring all the file regarding the Li Li Lin of Artesia, something like 45 document, and I waiting for 30 minute, they just make a copy though. So he got all of them.

THE COURT: Okay, thank you. All right.

Well, how to summarize my thoughts about the evidence that I've read. My thoughts encompass not only the evidence that I've read in the trustee's current motion, with all its exhibits, but inevitably it -- it also entails to some degree my recollections of the many hearings that have occurred in this matter. The many pleadings that I've read, and the many rulings that have been made,

not only in Mr. Law's Chapter 7 bankruptcy case, but in the several adversary proceedings that have been prosecuted in this Court, mostly against Mr. Law or Li Li Lin. Sometimes not further specified, and sometimes we know that the Li Li Lin [9] that we're talking about is Li Li Lin of Artesia. And then there has been other litigation, other appearances by someone we've come to identify as Li Li Lin of China.

The trustee essentially decided in 2004, after completing Mr. Law's 341 examination, that there was a possibility or likelihood that Mr. Law had fabricated a second deed of trust on his home, recorded in 1999 in the sum of $168,000, in favor of Li Li Lin and another fictitiously named entity. The trustee brought motions before me in late 2004, and while there were heated hearings over the trustee's 2004 motions, I -- I declined to act on the trustee's 2004 motions because I felt that -- while I understood the trustee's claims that Mr. Law had acted fraudulently with respect to the second deed of trust, the trustee had not furnished me with evidence that supported the claim of fraud.

In 2005, the trustee returned to court with -- after examining Li Li Lin of Artesia at a 2004 examination under my order. And in the trustee's renewed motion with respect to Li Li Lin and the second deed of trust, the trustee established, to my satisfaction, in his motion that Li Li Lin of Artesia had received from Mr. Law the $168,000 deed of trust some time before. And that she had also been asked to reconvey that deed of trust or to act at the instructions that appeared to have come from Mr.

Law. And [10] that supported the trustee's claim that the -- the $168,000 deed of trust appeared to be fraudulent.

The trustee was able to enter into a settlement agreement with Li Li Lin of Artesia. That was part of the trustee's motion. And I approved the settlement agreement arrived at between the trustee and Li Li Lin of Artesia. That -- that ruling was documented in an order entered in early 2005. And, in addition to the settlement recorded or documented with respect to Li Li Lin of Artesia, pursuant to the bankruptcy code, the lien of the deed of trust was not vacated, but it was preserved for the benefit of the estate, as set forth in my order.

The BAP, after Mr. Law's appeal, affirmed my order approving the trustee's settlement with Li Li Lin of Artesia. The BAP also affirmed an order directing the trustee to sell Mr. Law's home. The BAP also affirmed the sale of the home and so -- so far as I know, we have -- I have a final order from the BAP, disposing of Mr. Law's challenge to the settlement with Li Li Lin of Artesia. So, it would seem to me that the record on that matter is -- is part of the court records. And while the trustee -- there's evidence on this motion that uses extracts from that motion. There's a declaration from Li Li Lin of Artesia, for example, I believe in Exhibit 12 to the motion, and I know where it came from. The trustee knows where it came from. [11] Mr. Law may know where it came from but he may not. I would suggest that in the findings of fact that -- that I'm asking the trustee to prepare, that the complete pleading be attached, for example, showing -- where was that inflection with what motion was the declaration

filed, number one. Number two, the declaration refers to exhibits that are in the Court file, but they're not in the trustee's Exhibit 12. I think the declaration should be referred to in its complete form with exhibits. And then the disposition of that matter should be outlined as well, including my order and the unsuccessful appeal by Mr. Law.

Now, the next thing that happened of -- of import to this motion it seems to me is, the trustee -- excuse me, the BAP in reversing the surcharge order some time back, suggested to the trustee that if it wanted to lay the -- the apparent claim of Li Li Lin of China to rest, it had to take action against Li Li Lin of China. That has proved to be a problem. And the story there is rather complex.

Number one, this bankruptcy case was filed by Mr. Law with the help of Andrew Smyth in 2004. Later on and subsequent I guess to the 341 meeting, although I'm not sure. I don't know whether -- I don't believe Mr. Smyth was present at the 2004 -- excuse me, the 341 meeting in 2004 or not. There's nothing in the record to show there was. But I do know that, throughout most of this case, Mr. Law has [12] appeared pro se, without the help of Mr. Smyth. But in 2005 in response to the motion to settle with Li Li Lin of Artesia, Mr. Law showed up in opposition and Peter Chow, an attorney, showed up representing Li Li Lin of China. And I opposed the motion. I overruled the opposition to the motion and approved the motion. And I assume all that was the subject of Mr. Law's appeal to the BAP. But after that, Mr. -- Mr. Chow did not appear for some time in my Court. The trustee filed a declaratory

relief action against Li Li Lin, not designating Li Li Lin of China or otherwise identifying the defendant as somebody who live in California but lives somewhere else. And in that action, the trustee -- excuse me, Andrew Smyth, spelled S-M-Y-T-H, appeared on behalf of Li Li Lin, and it turned out that the Li Li Lin he was appearing on behalf of was Li Li Lin of China. There were preliminary hearings regarding the pleadings in that case. I issued orders to show cause. There were other matters that come up in the preliminaries of the case. And it turned out that Mr. Smyth, by the evidence that I've considered, A, was retained by Mr. Law to represent Ms. Li Li Lin of China. That Mr. Smyth was paid by Attorney Chang, who is -- has been identified in these cases as the ex-wife of Stephen Law, our Debtor. But more importantly, that Mr. Smyth had never talked to Ms. Lin, Li Li Lin of China, has never met Li Li Lin of China, does not speak Chinese and Ms. [13] Li Li Lin of China does not speak English. And when challenged a bit about his -- the nature of his representation, and asked by me for a written agreement pursuant to the Rules of Professional Conduct of California, Mr. Smyth responded that no written agreement was required because his services were -- when his services were less than the value of $1,000, and in this case they were of less than the value of $1,000.

As a result of that and other hearings in connection with the trustee's 2007 adversary proceeding against Li Li Lin, being Li Li Lin of China, I also urged the trustee to consider serving the defendant, Li Li Lin of China, properly using the rules that govern this Court. And doing it in China, and perhaps deposing Li Li Lin of China in

China, I suggested to Ms. Lin and Mr. Chow that Ms. Lin should come here and demonstrate her interest in the second deed of trust, purportedly given to her in 1999. And all my efforts to make suggestions to both parties to resolve that uncertainty came to not because Ms. Lin never came to California from China. She did not furnish evidence that was persuasive that she had made a loan in 1998 or 1999 to Mr. Law in the sum of $168,000, or that she was the rightful owner of the deed of trust on Mr. Law's home. So, as a result of frustration I think that's shared by Mr. Chow, who said words to the effect that, "Hey, I'm -- I'm now here on [14] Ms. Lin's behalf, and I have talked to her in China, but she is unable to come and I am unable to -- to do more," Mr. Chow said. "I'm in this case only to see if I could work out some kind of deal quickly. But if I can't do that, I'm not going to remain in this case any longer." Given that state of affairs, Mr. Smyth having been totally discredited so far as I could tell, and Mr. Chow telling me that he was going to do nothing further in terms of prosecuting a defense to the trustee's action. I know the trustee was frustrated. I was frustrated. Maybe Mr. Chow was frustrated and maybe Mr. Smyth was frustrated. And maybe Mr. Law was frustrated. But in any event, I dismissed that lawsuit for lack of prosecution with the consent of the parties such as they were.

But what I learned from that experience was that that experience along with all other experiences dealing with the person purported to be Li Li Lin of China, I have observed in the past and I observe again today that every -- every personal effort on the part of Li Li Lin of China appears to be written in English, number one, and

though she doesn't speak English. There's no explanation of how the declaration came to be written that would explain that Li Li Lin of China wrote it and that it was translated into English and here's the Chinese version and here's the English version. But more curiously, it seems to me is that [15] every single declaration from Li Li Lin, every pleading signed by Li Li Lin, has a printed signature in English, which probably any school child could duplicate, because the name Li Li Lin contains rather simple letters and they're -- they're simply presented in printed form. And there isn't much to distinguish one person's handwriting of Li Li Lin from another. But I must say that all the Li Li Lin signatures that I've seen from Li Li Lin, purported to be from Li Li Lin of China, look identical. They look like they were written by the same person. I'm not a handwriting expert, but that's how it appears to me. And yet none of those signatures has the ring of authenticity in the context in which those signatures were filed with the Court. They have the ring of something that was conjured up for fraudulent purposes or to -- as an abuse of process of the bankruptcy court.

And here we are on November 5, 2008, after nearly five years of -- of struggle between the trustee and Stephen Law, and neither Stephen Law nor anybody purporting to be Li Li Lin of China has come forth with any credible evidence demonstrating the loan represented by Mr. Law's bankruptcy schedule as a second deed of trust loan for $168,000 from Li Li Lin. Whereas Li Li Lin of Artesia did come forth with substantial evidence showing her involvement with Mr. Law, her familiarity with Mr. Law, the fact that she received the [16] deed of

trust from Mr. Law long since. And that subsequently she received handwritten instructions from an escrow company asking her to re-convey the deed of trust and to mail it back in signed documents. All which she suspected were documents created for an elicit purpose, and that she refused to sign because she didn't want to cause the IRS to be suspicious concerning her financial transactions. While her declaration demonstrated to me that she had no financial interest in this matter, and that whatever Mr. Law was doing, it had nothing to do with a loan to her.

So the only evidence that's been produced in five years in this case shows that there was a deed of trust executed and recorded in 2000 -- excuse me, in 1999. But that that deed of trust appears to be fraudulent.

In the meantime, in working its way through these difficulties, the trustee and his attorneys have incurred something in excess of $700,000 dollars in legal fees, mostly -- well, I don't know what the -- how to break it down, but certainly dealing with Mr. Law's numerous motions and appeals and requests for sanctions and evasiveness in discovery matters, delays in discovery matters, resistance to discovery, capped off I guess by Mr. Law's recent September 2008 refusal to answer questions concerning his 2004 testimony at the trustee's meeting of creditors in [17] which it is the trustee's duty to examine Mr. Law. In the trustee's motion, the trustee produced a transcript of that examination. Mr. Law, presented with the transcript at his deposition, refused to answer questions on the basis that, A, it was a long time ago and he couldn't remember, number one. Number two,

the transcript was not a court certified transcript. But I saw nothing in the deposition responses from Mr. Law that suggest that he didn't understand what the subject matter was or that he couldn't recall it. And the fact that Mr. Law could not recall discussions with the trustee concerning the $168,000 second deed of trust, that seems to me totally implausible, in light of the fact that Mr. Law has been steadfast and resolute in asserting that -- that the money is his, but that he borrowed money from Li Li Lin of China in 1998 and is simply standing up for what's right here by making sure that Ms. Lin is repaid what's coming to her.

The picture from beginning to end as supported by the trustee's evidence on this motion, persuades me that highly extraordinary circumstances exist in this case of abject lack of cooperation of the trustee, evasive conduct on the part of the Debtor. False oath as established in the judgment against Mr. Law in connection with his bankruptcy schedules. Fraudulent conduct in connection with his bankruptcy schedules as established by my order. The whole [18] picture satisfies me that the kind of extraordinary circumstances that the case law discusses exist in this case and warrants a $75,000 surcharge for -- or rather a surcharge that cancels any claim that Mr. Law has to payment on account of his homestead exemption claim in this case. I say it -- I put it in that language, because Mr. Law has several times said, "the BAP said years ago that my homestead exemption claim is valid and has been unchallenged, and therefore the trustee ought to pay it now. And if the trustee doesn't pay it now, the trustee should pay me $75,000 plus interest, plus

attorney's fees, plus sanctions, et cetera. There seems to be no end to what Mr. Law wants, and the problem with what Mr. Law wants is that he hasn't acted in a normal business-like way with respect to the trustee. I don't think I want to criticize him for standing up for what he believes to be his legal rights, but I think in this case he -- he's had every opportunity to do that, has not satisfied me that he's standing up for legitimate rights that have been -- that he can establish by credible evidence.

Let me just take a minute to look at the case law that I'm looking at. As I -- as I said in the first surcharge order is no longer before us, the 9th Circuit decision in *Latman vs. Burdette*, 366 F.3d 774 in 2004, affirmed the district court order in so far as it affirming [19] the granting by the bankruptcy court of the surcharge order against the debtor's exemption claims, as the 9th Circuit said, "to account for funds not properly disclosed," as the 9th Circuit analyzed it.

In 1994, the bankruptcy appellate panel of the 9th Circuit in *In Re Glass*, 164 Br. 759, had a slightly different situation. The debtor there had -- had made what the trustee asserted was a fraudulent transfer to the debtor's son. And when the trustee uncovered the circumstances of the transfer, he pressed the debtor and the debtor's son for recovery of the money -- of the property. The property was restored to the estate voluntarily by the debtor's son without the filing of an adversary proceeding.

Later when the trustee objected to the debtor's homestead exemption claim, the bankruptcy court

overruled the trustee's exemption -- overruled the trustee's ruling and said that the debtor was entitled to be paid his homestead claim. On appeal in the *Glass* case, the BAP reversed the bankruptcy court, saying that under the circumstances of that case, an adversary was unnecessary to recover from the debtor or his misconduct, to prevent the debtor from benefitting from his fraudulent conduct. In other words, the debtor in the *Glass* case had transferred the property out of the estate -- and I guess it's like a receiver on the football field stepping out of bounds. When [20] the debtor stepped back in bounds, he was disqualified from claiming a homestead exemption.

It seems to me that there's something of that nature in this case. The Debtor has made what appears to be a fraudulent claim. We don't have an adversary adjudication that it was fraudulent, but the record in this bankruptcy case and in several adversaries all adds up to the conclusion that there's something wrong in the state of Denmark, and this second deed of trust is not valid.

Therefore, the question in this case, different from the *Glass* case is, what should be done for the benefit of creditors to prevent the trust -- the Debtor from benefitting from an otherwise valid homestead exemption claim? And it seems to me here, the expenses caused to the estate, to the trustee, to the trustee's lawyers, have been disproportionate to the circumstances and have been caused primarily by the Debtor's failure to properly account for his financial affairs and for his transaction with regard to his property.

Appendix F

Finally, we have the case of *In Re Onubah*, O-N-U-B-A-H, 375 Br. 549, 9th Circuit BAP 2007. In this case, Mr. Onubah didn't conceal anything or defraud anybody, but he failed to cooperate with the trustee in the court-ordered sale of Mr. Onubah's home. And as a result, at the end of the -- of the process of sale of the home, and considering [21] all the rocks that the trustee was required to climb over in that case to bring about the proper court-ordered result, added up to a cost to the trustee of $59,000 out of pocket. The BAP said these were unnecessary expenses and affirmed the surcharge order of the bankruptcy court, because Mr. Onubah disobeyed a court order, and abused the bankruptcy process.

I don't know that Mr. Law has -- has disobeyed any order of mine, but I do believe that Mr. Law has abused the bankruptcy process, in failing to cooperate with the trustee more fully, and aggravating the trustee's expenses in pursuing these matters to a proper conclusion, and in extending the amount of effort necessary to sustain virtually every order of this Court over a five-year period.

Gentlemen, how long -- how much time do you need to prepare the findings of fact?

MR. GUBNER: Your Honor, I'm going to be out of town next week. What I propose is 15 days from today, instead of the usual 10 days to lodge an order and propose findings.

THE COURT: Okay. Which would be -- let me see. So that would be November 20 --

MR. GUBNER: I believe -- is that a Friday?

THE COURT: That's a Thursday --

MR. GUBNER: "Thursday." That would be -- I think [22] that would be fine, your Honor.

THE COURT: Okay. November -- the findings the fact from the trustee will be due on November 20.

Mr. Law, how much would you like to respond to that?

MR. LAW: Yes. Your Honor, I just want to say I objection (sic.) your tentative ruling, but I believe some thing are wrong. Because, first of all, the BAP has said, "the trustee have to determine Li Li Lin -- the lien on the property, before they can identify if I'm (sic.) the homestead exemption should be charged on -- cannot chargeable, right? And now the -- I think your -- some things are upside down. So the trustee to fail -- determine Li Li Lin of China, the lien is valid. Instead the case was dismissed. And the trustee on his reply to Debtor's supplemental evidence, he admitted -- he said, "Li Li Lin of Artesia's not the beneficial (sic.) of the deed of the trust." That he said. But that's not me. Li Li Lin of China is, so look likely the trustee's are going to find other Li Lin -- Li Li Lin to this case, which I don't think so they can do that (sic.).

Okay, so if otherwise, the Li Li Lin of China still the real Li -- the beneficial (sic.) of the deed of the trust. And your Justice said, "your face on the declaration of Li Li

Lin of Artesia back to 2005 (sic.), the [23] declaration. And the new declaration here, all -- all it says, "is not the beneficial the deed of the trust." He had a low interest on deed of the trustee -- deed of the trust. So, and also, your tentative ruling, based on the -- because I'm fighting the paper -- I'm fighting the paper to the path, is cause the trustee to spent (sic.) some money to do that. So that's why you're charging the $75,000 for the homestead exemption. And I think that's also so wrong. Because on the BAP, December 29, 2006, they only said that -- they said, "you're only to accepting this course from the debtor's homestead exemption, $75,000 to pay for the trustee -- the cost for the appeal," doesn't make a sense for the -- to charge the homestead.

So, and also there evidence (sic.) Li Li Lin of China, the record in the United States, such as the security -- security homeland -- Homeland Security Department, have the record of Li Li Lin of China. So, if we only base the past for the Li Li Lin of Artesia declaration, something like that or whatever, they open the escrow. But you look at the evidence, the evidence show (sic.) the County record research. The paper doesn't have anything I have been connect with, with this company to foreclosure that the -- the -- the property. Instead only the Li Li Lin and the trustee's attorney come to the County record research on the 2005 and -- no, on the 2000 February and 2005, by the [24] trustee attorney. And there no such of things -- if they want Li Li Lin of Artesia to assign this deed of trust to Connie Chang. They only request if they can foreclosure to sign this deed of trust -- to County record research in order to foreclosure the property.

Appendix F

So how can you to determine and Li Li Lin four years ago declaration, now that Li Li Lin leave declaration there -- said, no, no more (sic.). The law -- she's not the beneficial of the deed of the trust. And no such a document haven't been showed by this County of record research. I or Connie Chang to request to foreclosure. And if this foreclosure to County record research, so the only benefit is Li Li Lin of Artesia. How can I get the benefit? How can I get the money for all -- the County record research? They are the beneficial (sic.), they are the trustee. I think you should read more detail of the document we submitted, and I don't know if your (sic.) read the whole transcript of what my declaration, September 9 and 10 -- do you re-read the whole transcript, your Honor?

THE COURT: There's only a part of the transcript --

MR. LAW: I know. So that's why -- so that's why. And I -- I suppose the trustee, they should not only provide my transcript, also the Andrew Smyth

THE COURT: Well, you --

[25] MR. LAW: -- and the Peter Chow.

THE COURT: -- you had the opportunity to file something. You haven't filed anything, Mr. Law.

MR. LAW: Because they are the one get the transcript.

THE COURT: Well, they file what they think they needed --

MR. LAW: But they didn't -- they didn't file the whole thing.

THE COURT: They don't file the whole thing. It's all there in the record.

MR. LAW: But you didn't read the whole transcript yet.

THE COURT: They don't have to read the whole -- they don't have to read the whole transcript. They only have to give me the parts they want me to read.

MR. LAW: Okay. I suggest, your Honor, you read the whole transcript, and then you know what's happened. And the -- the most that --

THE COURT: Mr. Law, you have the opportunity under the rules to counter designate anything you wanted to designate. They filed this, I believe in -- on October 22nd. If you didn't -- if you think they left out something important on your behalf, you could have filed your designation --

[26] MR. LAW: Yeah, sure.

THE COURT: -- of the transcript. You didn't do that.

MR. LAW: I only call to read the whole thing. I mean --

THE COURT: It's not my responsibility to search through the transcript to find that. It's your responsibility, if you're not satisfied with what Mr. Gubner filed.

MR. LAW: Okay. So, I saw the -- the -- locker on the whole charge be on the -- on the -- on the -- tapes. So they didn't know. So anyway, so, and even the trustee and they admitted that Li Li Lin of Artesia is not the trustee of the deed of the trust. They just saying if that not mean Li Li Lin of China is the trustee of the deed of the trust. But now the Li Li Lin of China and absolutely he says he's the deed of the trust. Otherwise if the trustee can provide another Li Li Lin of wherever in some place, in California or some place, to this case. So, since the Li Li Lin -- she lien have not been determined (sic.), how can you say that? And that's the law is a fraudulent, your Honor. Is it make a sense? I mean, if you didn't determine Li Li Lin she lien is a fraudulent, how can we determine and I'm the fraudulent for this loan? The Li Li Lin lien thing have not determined -- does that make a sense? Then -- then also, Li Li Lin [27] offered the document by the County research show nothing about -- I -- I -- I request the deed to foreclosure. If I requested that Li Li Lin to foreclosure, how can I get the benefit? Either Li Li Lin of Artesia to get all the money and the County of research should still become the trustee of the deed of the trust. So I think and I suggest that Court to read more detail -- maybe you don't understand my language on the paper. And more to read the detail and you put in the whole transcript and where ever after they find the finding of the law on the -- on the December -- November the 20th, and I can find the same thing if we can take a look before you make a decision though. Thank you, your Honor.

THE COURT: Thank you, Mr. Law. All right.

MR. GUBNER: Yeah. One brief point, your Honor.

THE COURT: Sure.

MR. GUBNER: Despite Mr. Law's diatribe, he did not actually say how long he would need to respond. I would suggest five days. I think that's more than reasonable. Do you agree, Mr. Law?

MR. LAW: "Five days" for what?

MR. GUBNER: Once we file our proposed order and findings of fact that you would have five days to file anything that you want in opposition or counter.

MR. LAW: How -- how very long is normal, is seven [28] days, right? On the bench stay --

MR. GUBNER: Would you like seven days?

THE COURT: Yeah.

MR. GUBNER: Okay. I have no opposition to seven days, your Honor.

THE COURT: Okay, well that -- "seven days" --

MR. GUBNER: "Seven days" is Thanksgiving, so maybe we'd put it over to --

THE COURT: That would be December 1 under the -- Rule 9000.6.

MR. GUBNER: Yup.

THE COURT: To provide your response -- your responsive proposed findings and conclusions is due on December 1, okay?

MR. LAW: Okay.

MR. GUBNER: One other issue, your Honor, and I apologize. I was furiously taking notes during your recitation and your findings and conclusions, and there was one comment about the original declaration and attachments filed by Li Lu Lin (sic.) of Artesia, as we've come to call her. We did not kill another tree by reproducing that and you had mentioned at one point, my notes reflect that you'd like to attach it to the order. Might I suggest maybe, if the Court is so inclined, it could create a complete record, that we simply file a request for judicial notice to ask the [29] Court to take judicial notice of that document that was previously filed with the Court some two years ago, and attach the whole thing to that. And then you can -- we'll reference it in the proposed findings of fact and conclusions.

THE COURT: Okay, I -- I think I agree with what you said, but I want to question you a little bit, Mr. Gubner --

MR. GUBNER: Yes.

THE COURT: -- because once in a while lawyers are thinking of something different than I am --

MR. GUBNER: Okay.

THE COURT: When you make a request for judicial notice, that would be perfectly appropriate to do that, and that's a perfectly appropriate way to get that information in front of Mr. Law, on the record and in my hands, but you have to attach all the documents.

MR. GUBNER: Right. We'll attach the complete declaration, including all exhibits were originally attached to that declaration and filed with the Court. Because this is a motion, as opposed to an adversary complaint, technically it is already part of the record. Because there is no distinction between a docket entry from three years ago and a docket entry to today. This Court could -- could --

[30] THE COURT: Well there is in this case, in light of your argument and my reaction to your argument.

MR. GUBNER: Understood --

THE COURT: I think I really need the documents in front of me --

MR. GUBNER: On behalf of --

THE COURT: -- so that I can look at them -- I remember a lot of things --

MR. GUBNER: Right.

THE COURT: -- but I don't remember every detail of this five-year-old case.

MR. GUBNER: Understood. And so I think that's the better way to go. To simply refile it in the main case docket as a request for judicial notice and attach the original file-stamped copy --

THE COURT: Right.

MR. GUBNER: -- with all the exhibits.

THE COURT: Right.

MR. GUBNER: Okay. Because when I was taking notes, you said you wanted to attach the order, and I thought that might make it too bulky. Because we end up with an order that's a couple inches thick, as opposed to an order that might be several pages of findings and conclusions.

THE COURT: I don't recall signing an order that [31] was ever a couple inches thick.

MR. GUBNER: Well, I agree. But when I was taking notes, I thought I heard you say you wanted the declaration attached to the proposed findings, as opposed -- and my suggestion was simply to file a request for judicial notice --

THE COURT: That's -- that's fine, as long as there's a reference --

MR. GUBNER: Right.

THE COURT: -- in the --

MR. GUBNER: And we can reference --

THE COURT: -- findings of fact.

MR. GUBNER: -- there's an order attached to the request filed on this date. We can do that in a day or two.

THE COURT: Okay. But -- but I want you to understand, I don't think it's enough to give me a solid reference to the docket in your findings of fact. You have -- also have to give me the evidence in hard copy that I can look at while I'm looking at your proposed findings.

MR. GUBNER: Noted. And we will have that -- we will have that filed forthwith, so it's attached and ready for your review.

THE COURT: Okay.

MR. GUBNER: One final thing. Does your Honor have a preference on whether or not the order is separate [32] from the findings of fact and the conclusions of law? Or would you like the findings of fact and conclusions contained within the same body as the order?

THE COURT: Rule 9021 requires a separate order.

MR. GUBNER: We will of course prepare that. And then finally, would your Honor like us to also provide at the same time a Word version of the findings --

THE COURT: Yes.

MR. GUBNER: -- and the order as well, in order that if you decide to modify it, it will be much easier to do?

THE COURT: Yes.

MR. GUBNER: Very well. We'll go ahead and email that then to your clerk.

THE COURT: Yes.

MR. GUBNER: Okay.

THE COURT: Thank you.

MR. GUBNER: Those are all my questions. Thank you very much, your Honor.

THE COURT: Okay. I have a couple more comments --

MR. GUBNER: Judge --

THE COURT: -- in response to questions Mr. Law has raised.

Mr. Law suggested that I'm off base in my [33] tentative ruling because of the BAP's admonition to the trustee, that the trustee had to disprove Li Li Lin of China's claim. I believe I said in my tentative ruling, but if I didn't, I'm going to repeat it right now. Li Li Lin of China has never filed a proof of claim in this case. Any pleading that she has filed in this case has proved to be a forgery, fictitious, not worthy of consideration. And

although I've given Li Li Lin of China every opportunity that I'm capable of according to her, and although she's had the help of two lawyers to some degree or another from 2005 at least, up until the current time, no lawyer speaking on behalf of the purported Li Li Lin of China's claim has come forth with plausible evidence, credible evidence, useful evidence, persuasive evidence. The claim of Li Li Lin of China simply does not exist, and it's my conclusion that a reasonable amount of time has been expended by the trustee, by me, without Li Li Lin of China or any representative on her behalf coming up with plausible, credible, persuasive evidence.

Therefore, it seems to me there is cause to be suspicious about what may be a found second deed of trust, number one. Number two, the trustee's evidence on this motion also documents the fact that this promissory -- this deed of trust is supported by two promissory notes. One that contains a purported date of birth for the purported Li [34] Li Lin of China. The other which does not. And I think the trustee has explained persuasively how those two versions of the promissory note came about. How one version or the other was used to mislead the trustee and the Court, and pleadings in this Court. And how, in the end, the evidence revealed by the alternate use of the two forms of promissory note, provides strong evidence of fraudulent behavior on the part of Mr. Law.

All right, thank you. I'm going to take this under advisement upon receipt of proposed findings and Mr. Law's response to the proposed findings. One other thing. Mr. Law, I mean, I want to make sure I didn't

misunderstand you when you spoke. You complain that -- that I should have read the entire --

MR. LAW: Transcript.

THE COURT: -- "transcript" of the two days of deposition. It's not my function to read every transcript that the parties might want to create for their purpose. The only thing that I'm charged with reading are the parts of the transcript that's sufficient to identify what it is and -- and what it is that the trustee in this case wants me to read. So the trustee has given me -- I don't know how many pages, maybe 20 or 30 or 40 pages that the trustee wants me to read. I've read those. I understand what the trustee's given me that material for. And as I say, you had [35] the opportunity under my order that I issued earlier -- my order entered on September 19 said, "that if there were to be any further pleadings or evidence, that should be filed not later than October 22nd. Now Mr. -- Mr. Gubner filed his papers on October 22nd. If you wanted to challenge some of that evidence, you should have challenged it before this hearing by --

MR. LAW: I did.

THE COURT: -- by filing your -- yeah, I know. But you didn't file additional deposition testimony. That's my point. And the rules say that if you want to challenge the other guy's deposition testimony, you have to counter designate the portion of the deposition that you want me to consider. So you had the opportunity to do that, and you're -- you're quite familiar with our local rules and

procedures. You haven't done that. So that's not what you're -- you're proposed findings should do. They should be based on the record as it exists right now.

MR. LAW: But I did file --

THE COURT: And if you feel that the trustee is somehow distorted the records of the Court in any way, then of course you're free to challenge that. But you have to challenge it in the same way that the trustee did. You have to show me proof in the -- in the Court's records by asking me to take judicial notice of documents in the Court's [36] records that support your claim that the trustee is trying to take advantage.

MR. LAW: Your Honor, I did file the opposition to trustee's supplemental.

THE COURT: I understand.

MR. LAW: I did. But --

THE COURT: I understand. I've read that.

MR. LAW: Okay.

THE COURT: I overruled that.

MR. LAW: Okay. I have question though. And I don't know why -- what's the basis your overrule my evidential (sic.) objection to trustee's attorney? Which --

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THE COURT: We don't think it's a proper evidentiary objection. I don't have to explain my rulings --

MR. LAW: He said he -- he prepared five hour for the motion I file.

THE COURT: No -- evidence --

MR. LAW: You understand, right?

THE COURT: Go ahead.

MR. LAW: That this -- my motion, he said -- first of all, he said he prepared five hour to prepare the motion I file. Second, they said, they -- they spend probably another two hour for the reply. The reply is -- my reply, not his reply. So this is totally wrong. Addition, your [37] Honor, you are the person -- to personally to exempt the -- the original deed of trust and notes, by yourself. And the Richard Mann, he said, "you give it." So that's under the penalty of recursion. So that's why I fight the objection. What's the basis to overrule though?

THE COURT: It's not a proper evidentiary objection. Thank you.

MR. GUBNER: Thank you, your Honor.

MR. MANN: Thank you, your Honor.

(Proceedings concluded.)

APPENDIX G — MEMORANDUM OF THE UNITED STATES BANKRUPTCY APPELLATE PANEL, OF THE NINTH CIRCUIT, FILED DECEMBER 29, 2006

UNITED STATES BANKRUPTCY APPELLATE PANEL, OF THE NINTH CIRCUIT

In re: STEPHEN LAW,

Debtor.

LILI LIN,

Appellant,

v.

ALFRED H. SIEGEL, Chapter 7 Trustee; UNITED STATES TRUSTEE; PERLISS & GROSS; STEPHEN LAW,

Appellees.

STEPHEN LAW,

Appellant,

v.

ALFRED H. SIEGEL, Chapter 7 Trustee,

Appellee.

Bankruptcy No. LA 04-10052-TD
Adversary No. LA 04-01969-TD
Nos. CC-05-1303-KMoB, CC-05-1344-KMoB, CC-06-1195-KMoB, CC-06-1180-KMoB

Argued and Submitted Nov. 15, 2006.
Filed Dec. 29, 2006.

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Appeals from the United States Bankruptcy Court for the Central District of California. Honorable Thomas B. Donovan, Bankruptcy Judge, Presiding.

Before: KLEIN, MONTALI and BRANDT, Bankruptcy Judges.

MEMORANDUM*

We confront four related appeals arising from the chapter 7 trustee's efforts to liquidate nonexempt equity in the debtor's residence. The debtor appeals orders requiring turnover of the property to the trustee (No. CC-05-1344), authorizing sale of the property (No. 06-1195), and surcharging the debtor's homestead exemption (No. 06-1180). In addition, one of two people claiming to be the "Lili Lin" to whom the debtor granted a lien on his residence appeals the order approving a settlement with the other Lili Lin (No. 05-1303). In a parallel appeal, we have affirmed the denial of the debtor's discharge (No. CC-05-1352).

We DISMISS, as moot, the appeals from the orders authorizing turnover and sale of the residence and AFFIRM the order approving the settlement with one of the two Lili Lins, but clarify (as conceded by the trustee during oral argument) that there has not been an adequate judicial determination that the other Lili Lin does not

---

* This disposition is not appropriate for publication and may not be cited except when pertinent under the doctrine of law of the case of the rules of *res judicata*, including issue and claim preclusion. *See* 9th Cir. BAP Rule 8013-1.

actually have a lien; hence we will also extend the stay of distribution of the sale proceeds that we previously entered pending the resolution of this appeal until the other Lili Lin's rights have been determined. We REVERSE the order surcharging the debtor's homestead exemption.

FACTS

Stephen Law filed a chapter 7 case in January 2004 in which he scheduled and claimed as exempt a residence in Hacienda Heights, California. Alfred Siegel is the case trustee.

The residence was scheduled as having a value of $363,348.00 subject to two voluntary liens. The first is a note and deed of trust on a conventional mortgage dated from 1988 on which $147,156.52 was owed at the time in filing. Second, a 1999 note and deed of trust debt ("Note and DOT") scheduled at $156,929.04 in favor of Lili Lin was listed on Schedule D as "Lin's Mortgage & Associates, 114 Shan Xan Jui Rd, Guangzhou, PR China." There were also two judgment liens of $131,821.74 and $3,750.00.

Appeal No. 05-1303

The trustee challenged the Lili Lin lien by filing Adversary Proceeding No. 04-1969 to avoid the grant of the lien on a fraudulent transfer theory by way of California Civil Code § 3439.04(a) and the "strong arm" power under 11 U.S.C. § 544(b).

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In the complaint, the trustee alleged that the $168,000 promissory note to Lili Lin, dated June 24, 1999, and the attendant deed of trust were fictitious, fraudulent, and intended to diminish the equity in the property.[1]

The trustee obtained a default judgment in the adversary proceeding on August 31, 2004, which was vacated on October 21, 2004, after a Lili Lin from China ("Lili Lin of China") filed a Motion to Set Aside Default and Default Judgment through counsel.

In April 2005, a Lili Lin from Artesia, California ("Lili Lin of Artesia"), filed an answer in the adversary proceeding and a stipulation for judgment that purported to resolve all the differences between the trustee and Lili Lin of Artesia with respect to the adversary proceeding.

Lili Lin of Artesia executed a declaration stating that she knows the debtor and did not loan him money as set forth in the Note and DOT. She further declared that the debtor gave her a copy of the Note and DOT in 1999, but never explained to her why he gave her the documents. She also stated that she did not reside in China, she did not sign a declaration in support of the motion to set aside the default judgment, and had never retained attorney Peter Chow to represent her in the adversary proceeding, nor had she ever spoken with him.

---

1. We have no explanation how, or whether, the original note amount was paid down or the scheduled amount was an error. In any event, the discrepancy is not material to our analysis of the issues before us.

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The trustee filed a Motion to Approve Compromise with Lili Lin of Artesia. Lili Lin of China filed an opposition to the compromise arguing that she had not settled with the trustee.

A hearing on the compromise was held on May 18, 2005. The trustee appeared through counsel, the debtor appeared *pro se*, and attorney Peter Chow appeared on behalf of Lili Lin of China.

The court ruled that Lili Lin of China lacked standing to oppose the compromise motion. The court noted that Lili Lin of China had never actually appeared in court in person and had not furnished evidence to the court that she was the lienor. In contrast, there was Lili Lin of Artesia's evidence that she had been involved in the grant of the lien in 1999.

The court determined that the evidence proffered by the trustee was sufficient to grant the compromise motion and that approval of the stipulated judgment in favor of the trustee was fair and equitable, and in the best interests of the estate. The stipulated judgment provided that the transfer to Lili Lin of Artesia was avoided under § 544(b), and California Civil Code § 3439.04(a). The interests of Lili Lin of Artesia in the Note and DOT were deemed recovered by the trustee under § 550(a) and preserved for the benefit of the estate under § 551.

On May 31, 2005, Lili Lin of China, acting *pro se*, filed an answer to the trustee's adversary complaint, together with a Motion for Reconsideration of the order approving the compromise between the trustee and Lili Lin of Artesia.

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A hearing on the Motion for Reconsideration was held on July 6, 2005. Neither Lili Lin of China, nor the debtor appeared at the hearing. On July 12, 2005, the court denied the motion. Lili Lin of China appealed (BAP No. CC-05-1303).

The answer by Lili Lin of China remains on file. During oral argument of this appeal, the trustee conceded that the settlement with Lili Lin of Artesia did not resolve the contention by Lili Lin of China that she is the lienor and that the issue is still open to be resolved. To the extent that the trustee may need to take action that requires service of process, attorney Andrew Smyth (who entered an appearance and argued the appeal on behalf of Lili Lin of China) agreed in open court to accept service of process on behalf of Lili Lin of China.

Turnover motion (BAP No. CC-05-1344)

On July 8, 2005, the trustee filed a Motion for Turnover of the property pursuant to 11 U.S.C. § 542 on the premise there was equity in the property for the benefit of the estate.

A hearing was held on August 3, 2005, and the motion was granted on August 10, 2005, over the debtor's opposition.

The debtor appealed the turnover order (BAP No. CC-05-1344). We denied a motion for stay pending appeal, as did the Ninth Circuit. The property has since been turned over and sold.

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Sale Motion (BAP No. CC-06-1195 and 06-1180)

On January 9, 2006, the trustee filed a Motion to Sell the property free and clear of liens, interests, and encumbrances pursuant to 11 U.S.C. §§ 363(f) & (m). Debtor opposed the motion, which was heard by the court on February 1, 2006.

At the hearing on the sale motion, an auction was conducted. The property was sold to the high bidder for $680,000, which was approximately $165,000 more than the sum of all liens listed on Schedule D plus the debtor's homestead exemption.

The order granting the sale motion was entered on February 22, 2006. Escrow on the sale closed on March 9, 2006. The court ruled that the purchaser of the property was a buyer in "good faith" within the meaning of 11 U.S.C. § 363(m), and was entitled to the protections afforded by that section.

Surcharge motion
(BAP No. CC-06-1195 and 06-1180)

When he filed the sale motion, the trustee also filed a Motion to Surcharge in which he sought to surcharge the debtor's $75,000 homestead exemption by $75,000 because the debtor "engaged in exceptional circumstances of misconduct" by "willfully and knowingly attempt[ing] to defraud his creditors by removing equity from the property."

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With respect to the surcharge motion, which was also heard at the February 1 hearing, the parties acquiesced in the court's suggestion to discuss settlement regarding the distribution of the sale funds so that the debtor may be able to keep some or all of his homestead exemption. The court thereupon continued the hearing on the surcharge motion.

On February 24, 2006, the debtor and Lili Lin of China filed a Motion for Reconsideration of the sale order. In the alternative, they sought a stay of the sale order pending appeal.

On March 22, 2006, the court held a combined hearing on the reconsideration motion and the continued surcharge motion.

With respect to the surcharge motion, the parties informed the court that settlement negotiations had failed. The court explained to the debtor that settlement would be in the best interests of all parties involved because the expenses associated with the debtor's conduct would consume "just about any benefit that anybody might get" out of the case. The court then granted the surcharge motion. In doing so, the court stated:

> Having said that, I would also have to acknowledge, without in any way adjudicating the matter, that as far as I am aware, all of the appellate activity in this case has been initiated by Mr. Law. I am not sure where any of those appeals are going. It is not my business to know that. It is my business to wait

> and see what the appellate courts have to say. But I can at least acknowledge that the fact that the Trustee in matters brought before me has expended enormous amounts of time and energy in bringing this case to the point that it has been brought. The case has been a difficult one, both in terms of the claims made by the Trustee, but also in the resistence put up by Mr. Law. And those efforts have resulted in substantial, although not yet accounted for to me, expenses of the Trustee and fees of the Trustee's attorneys.
>
> While it is unfortunate that Mr. Law is not able to benefit from his homestead exemption claim as a result of my ruling today, it seems to me that all things considered, it is basically Mr. Law's conduct that has been the direct cause of the expenses that have been incurred by the Trustee, or at least the bulk of the expenses that have been incurred by the Trustee in this case, up to this point, before me and presumably, in order to vindicate the orders issued in favor of the Trustee, I would have to surmise that substantial additional expenses are going to be incurred by the estate in defending Mr. Law's appeals.

The court also denied the debtor's motion to reconsider the sale order and his oral motion for stay pending appeal.

The debtor appealed the sale and surcharge orders (BAP Nos. CC-06-1195 and CC-06-1180).

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JURISDICTION

The bankruptcy court had jurisdiction via 28 U.S.C. § 1334. We have jurisdiction under 28 U.S.C. § 158(a)(1).

ISSUES

(1) Did the court abuse its discretion when it approved the compromise between the trustee and Lili Lin of Artesia?

(2) Whether the court's finding that Lili Lin of China lacked standing to oppose the compromise between Lili Lin of Artesia and the trustee was conclusive to determine Lili Lin of China's status as a lienholder.

(3) Whether the debtor's appeals of the orders requiring turnover of the property and authorizing its sale are moot.

(4) Whether surcharge of the debtor's entire $75,000 homestead exemption was warranted.

STANDARD OF REVIEW

We review an order approving a compromise of a controversy for an abuse of discretion. *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1380 (9th Cir. 1986). Findings of fact are reviewed for clear error, and conclusions of law are reviewed *de novo*. *Latman v. Burdette*, 366 F.3d 774, 781 (9th Cir. 2004). Equitable surcharge is reviewed for abuse of discretion. *Id.*, at 786.

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DISCUSSION

Adversary proceeding 04-1969 (BAP No. CC-05-1303)

The bankruptcy court concluded that Lili Lin of China did not have standing to oppose the compromise between the trustee and Lili Lin of Artesia.

Lili Lin of China argues that she has not received a judicial determination of whether she is the "real" Lili Lin. Rather, she contends that the bankruptcy court simply accepted the trustee's word that Lili Lin of Artesia is the "real" Lili Lin involved in the 1999 Note and DOT with the debtor.

Lili Lin of China further argues that the court-approved stipulated judgment between the trustee and Lili Lin of Artesia inappropriately establishes facts adverse to her as a "non party" and cites *Howard Young Mediation Ctr., Inc. v. Shalaka*, 207 F.3d 437 (7th Cir. 2000), in support.

As to standing, Lili Lin of China had the burden to establish her standing, which requires a demonstration that the compromise would cause her to be "injured in fact." *United Food & Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 551, 116 S. Ct. 1529, 134 L. Ed. 2d 758 (1996); *Oregon Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1108-09 (9th Cir. 2003); *Cheng v. K&S Diversified Invs., Inc. (In re Cheng)*, 308 B.R. 448, 454 (9th Cir. BAP 2004), *aff'd mem.*, 160 Fed. Appx. 644 (9th Cir. 2005).

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Lili Lin of China has not demonstrated that she has been "injured in fact" by the compromise between the trustee and Lili Lin of Artesia. The settlement with one of the Lili Lins does not, in principle, affect the rights of the other.

Indeed, the court's conclusion that Lili Lin of China lacked standing necessarily constituted the court's determination that she was not "injured in fact" by the compromise with the other Lili Lin. It follows, then, that her fear that she might lose her right to continue to assert the 1999 lien (which is premised on the assumption that she would be frozen out and, hence, "injured in fact") is misplaced.

Since the court's determination that she lacked standing was necessarily premised on a lack of "injury in fact," the ruling, by definition, contradicts a contention that she would be precluded from proceeding by virtue of that ruling. It is plain that Lili Lin of China remains entitled to assert her claim to the 1999 Note and DOT.

Moreover, at oral argument, the trustee conceded that the rights of Lili Lin of China have not been judicially resolved; this concession also was consistent with the trustee's contention that Lili Lin of China lacks appellate standing. The answer filed by Lili Lin of China caused her to join the issue on the merits. Attorney Andrew Smyth represented to this Panel that he now represents Lili Lin of China and will proceed towards prompt judicial resolution and will accept service of process and other papers on behalf of Lili Lin of China. The court will now

need to resolve the dispute by way of findings of fact and conclusions of law following the close of appropriate proceedings.[2]

In short, the court did not err in determining that Lili Lin of China was not "injured in fact" by the trustee's compromise with Lili Lin of Artesia.

Appellate standing is different. In order to have appellate standing, one must be "directly and adversely affected pecuniarily by an order of the bankruptcy court." *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d at 442-43 (9th Cir. 1983); *Cheng*, 308 B.R. at 454.

The question of appellate standing is clouded in this instance by the trustee's efforts to distribute the proceeds of the sale of the residence as if the rights of Lili Lin of China had been conclusively rejected. We have, in a separate order issued on November 9, 2006 (in 06-1379), found it necessary to issue a stay of that distribution. At oral argument of this appeal, the trustee's counsel repeatedly responded to questions about the need to obtain judicial resolution of the status of Lili Lin of China

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2. We will leave the precise procedure to the discretion of the bankruptcy court, subject to applicable rules of procedure and principles of due process. While we are mindful that the trustee may have evidence that would enable the court to conclude that Lili Lin of China is not the beneficiary of the 1999 Note and DOT and might not even exist, the current posture of the dispute reveals two sides to the story. It is peculiarly within the fact-finding competence of a trial court to believe and disbelieve evidence and to ascertain the correct story.

before distributing the proceeds by saying words to the effect, "I am not sure I have to do that," which may be construed to include the implied conclusion, "hence, I am not going to do that." That prospect of unilateral action by the trustee, however unwarranted, arguably supports appellate standing.

For purposes of this appeal and for the sake of completeness, we assume, without deciding, that Lili Lin of China has standing to appeal because of the risk that the trustee will attempt to dissipate the sale proceeds without having first obtained a judicial determination establishing Lili Lin of China's lien status in those proceeds.

The order being appealed is a compromise reached between the trustee and Lili Lin of Artesia. Pursuant to the compromise, the transfer accomplished by the grant of the deed of trust in 1999 was avoided under California Civil Code § 3439.04(a), as incorporated by § 544(b), and the Note and DOT were recovered from Lili Lin of Artesia to the extent she had rights in that lien that were preserved for the benefit of the estate under § 551.

A compromise, which must be in the best interests of the estate, is scrutinized under the legal standard of whether it is "fair and equitable," taking into account: (a) probability of success in litigation; (b) collectability; (c) complexity, expense, inconvenience, and delay attendant to continued litigation; and (d) the interests of creditors. *A & C Props.*, 784 F.2d at 1381; *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 290 (9th Cir. BAP 2005).

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If Lili Lin of Artesia is the "true" Lili Lin, then based on the evidence proffered by the trustee. the compromise is fair and equitable and is in the best interests of the estate because it amounts to total victory for the trustee. Conversely, if she is merely an interloper, the compromise is also fair and equitable because it eliminates the interloping. It follows that the bankruptcy court did not abuse its discretion when it approved the trustee's compromise with Lili Lin of Artesia. The order approving the compromise will be affirmed.

Turnover Order (BAP No. CC-05-1344)

The trustee argues that the appeal from the turnover order is moot because the turnover has been completed and the property has been sold to a good faith purchaser, without a stay pending appeal having been obtained. We agree. *Onouli-Kona Land Co. v. Richards (Onouli-Kona Land Co.)*, 846 F.2d 1170, 1172-73 (9th Cir. 1988); *Vista Del Mar Assocs., Inc. v. West Coast Land Fund (In re Vista Del Mar Assocs., Inc.)*, 181 B.R. 422, 424 (9th Cir. BAP 1995). The appeal from the turnover order will be dismissed as moot.

Sale Order (BAP No. CC-06-1195)

The trustee argues that the appeal from the sale order is moot because the property has been sold to a good faith purchaser, without a stay pending appeal having been obtained.

The debtor counters that he requested a stay pending appeal in his motion for reconsideration of the sale order that he caused to be set for hearing on March 22, 2006, but that the trustee sold the property before the hearing. Although the debtor contends that there may ultimately be a remedy imposed against the trustee personally (as to which we express no view), we are constrained to conclude that the appeal is statutorily moot.

If an appellant does not obtain a stay pending appeal of an order permitting the sale of assets to a good faith purchaser, the appeal is moot. *Onouli-Kona Land Co.*, 846 F.2d at 1172-73 ; *In re Vista Del Mar Assocs., Inc.*, 181 B.R. at 424.

There are two recognized exceptions to the mootness rule: (1) where the debtor has a statutory right of redemption, and (2) whether other state law would permit the sale to be set aside. *Vista Del Mar Assocs., Inc.*, 181 B.R. at 425. Neither exception applies here. The debtor has no redemption rights under California law, nor has he cited other state law that would permit the sale to be set aside.

The court ruled in the sale order that the property was sold to a good faith purchaser under 11 U.S.C. § 363(m). The debtor does not contend that the purchaser acted with a lack of good faith. Since the validity of that ruling is not challenged, we have no occasion to examine its factual basis.

The debtor's assertion that the sale was inappropriately precipitous is not persuasive. The record reflects that, on February 24, 2006, the debtor sought reconsideration of the sale order, or, in the alternative, stay pending appeal and set a hearing date for March 22, 2006. The pendency of such a motion did not operate as a stay and did not prevent the closing of escrow on the sold property on March 9, 2006. The debtor chose March 22, 2006, as the hearing date on his motion for the stay pending appeal. Central District of California Local Bankruptcy Rule 9075-1 permitted the debtor to file either an emergency motion for stay or a motion for stay to be heard on shortened notice. The debtor did neither.

Accordingly, the appeal from the sale order must be dismissed as moot by virtue of § 363(m).

Surcharge order (BAP No. CC-06-1180)

The debtor appeals the order surcharging his $75,000 homestead exemption by $75,000. He contends that the only sanction imposed in his case was in the amount of $3,520 and argues that the sole reason for surcharging the entire $75,000 exemption is to pay the trustee and his attorney their fees.

The trustee argues that the court appropriately surcharged the entire homestead exemption in response to the debtor's exhibited fraudulent conduct, his bad faith in pursuing repeated litigious actions, and his failure to comply with the court's orders and with the trustee.

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A bankruptcy court may equitably surcharge a debtor's statutory exemptions when necessary to protect the integrity of the bankruptcy process. *Latman*, 366 F.3d at 786. Denial of discharge and surcharge are separate inquiries that are not necessarily mutually inconsistent. *Id.*, at 783-84.

Surcharge is an equitable power that enables a bankruptcy court to fashion a remedy in "exceptional circumstances" that is tailored to "ensure that debtors retain their statutory 'fresh start,' while also permitting creditors access to property in excess of that which is properly exempted under the Bankruptcy Code. *Id.*, at 786. Equitable surcharge of a debtor's statutory exemptions must be "reasonably necessary both to protect the integrity of the bankruptcy process and to ensure that a debtor exempts an amount no greater than what is permitted by the exemption scheme of the Bankruptcy Code." *Id.*

The *Latman* decision is instructive. It involved a situation where assets were hidden by the debtors and later discovered by the trustee. The debtors' discharge was denied, and the court surcharged the debtors' "wild card" exemption in two respects: (a) the amount of proceeds of an undisclosed sale; and (2) the amount of funds in a hidden bank account unless such funds were turned over to the trustee. *Id.*, at 779-80. This was a remedy tailored to the particular situation that was not designed to "punish", but rather to protect the debtor's creditors by preventing the debtors from "sheltering *more* assets than permitted" by statute. *Id.* at 785 (emphasis in original).

Similarly, we have approved of conditioning the allowance of an amended claim of exemptions on payment of trustee fees and counsel fees from assets not otherwise available to the estate (i.e., surcharging an exemption) in circumstances that require determination of the appropriate amount of fees based on whether they were reasonable and incurred based on the reasonable expectations about what the estate would receive. *Arnold v. Gill (In re Arnold)*, 252 B.R. 778, 788-89 (9th Cir. BAP 2000), *cited with approval, Latman*, 366 F.3d at 786 n.9.

In *Arnold*, we emphasized that total denial of an exemption (a $75,000 surcharge of a $75,000 exemption is tantamount to total denial) requires the existence of "bad faith" or of "prejudice to creditors." *Arnold*, 252 B.R. at 785-88.

Although this case presents instances of debtor misconduct, obstinance, blatant ignorance of court orders and directives, animosity towards the court and the trustee, and efforts to thwart administration of the case, the debtor was not hiding property. Rather, the nub of the dispute was that the trustee contested the validity of a fully-disclosed lien on real property, the validity of which has not yet been determined.

Regardless of the debtor's tactics, it is apparent that the debtor was not abusing his exemptions and that the trustee was not seeking to remedy such abuse. Rather, the intent of the trustee was to punish the debtor for his tactics. The sort of extraordinary circumstances that would be a prerequisite to surcharge have not been demonstrated.

Similarly, it is apparent that the court was merely shifting litigation expenses to the debtor in a fashion designed to punish the debtor for his litigation activity. The court explained that the debtor's conduct "has been the direct cause of the expenses that have been incurred by the trustee" and that "additional expenses are going to be incurred by the estate in defending [the debtor's] appeals." While we do not quarrel with those observations, they do not warrant denial of a homestead exemption that was claimed from the outset of the case.

While surcharge and denial of discharge are separate inquiries, the fact that the discharge has been denied is not irrelevant. After the bankruptcy case is over, creditors who may have been disadvantaged by the extent of litigation in the case will remain entitled to collect their debts.

In context, we have the definite and firm conviction that the $75,000 surcharge of a $75,000 exemption in this instance is not warranted by *Latman* or by *Arnold*. Accordingly, the order surcharging the debtor's $75,000 homestead exemption by $75,000 will be reversed. We express no opinion whether specific instances of mischief by the debtor in the past might support further monetary sanctions in the future, including a surcharge against his exemption. We point out, however, that any such relief to the trustee should be supported by specific findings of fact and appropriate conclusions of law regarding the debtor's conduct, including an adequate explanation why any surcharge based on specific damages or expenses incurred by the estate should be reimbursed from the debtor's exemption.

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CONCLUSION

The compromise reached between the trustee and Lili Lin of Artesia was fair and equitable and is AFFIRMED. However, because Lili Lin of China's status as a lienholder was not conclusively determined by the compromise order, if the trustee continues to contest the lien status of Lili Lin of China, it is incumbent upon the trustee to obtain an appropriate judicial determination eliminating her interest. The stay of distribution of sale proceeds will remain in effect until the dispute with Lili Lin of China is resolved. We are concurrently issuing an order in 06-1379 to that effect. The appeals from the turnover and sale orders are DISMISSED as moot. The order surcharging the debtor's $75,000 homestead exemption by $75,000 is REVERSED.

APPENDIX H — VOLUNTARY PETITION, UNITED STATES BANKRUPTCY COURT, CENTRAL DISTRICT OF CALIFORNIA, FILED JANUARY 5, 2004

SEE SUPPLEMENTAL APPENDIX

PAGES 1a - 2a

FOR

VOLUNTARY PETITION

APPENDIX I — SUMMARY OF SCHEDULES, SCHEDULES A – J, UNITED STATES BANKRUPTCY COURT, CENTRAL DISTRICT OF CALIFORNIA, FILED JANUARY 5, 2004

SEE SUPPLEMENTAL APPENDIX

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FOR

SUMMARY OF SCHEDULES
SCHEDULE A (REAL PROPERTY)
SCHEDULE B
SCHEDULE C
SCHEDULE D
SCHEDULE E
SCHEDULE F
SCHEDULE G
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SCHEDULE I
SCHEDULE J

APPENDIX J — DECLARATION CONCERNING SCHEDULES

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FOR

DECLARATION CONCERNING SCHEDULES

APPENDIX K — EXHIBITS TO LILI LIN OF CHINA'S OPPOSITION TO PLAINTIFF'S MOTION TO APPROVE COMPROMISE

DECLARATION OF LIN OF CHINA (MAR. 2005)

DECLARATION OF LILI LIN

I, Lili Lin, declare:

1. I am the Defendant in the above-entitled case and, if called upon to testify, I could and would testify competently to the following:

2. The instant case arose out of Debtor, Stephen Law's Bankruptcy matter, Chapter 7, Case No. LA04-10052TD.

3. Debtor, Stephen Law, and I have been friends for about 30 years. Around 1998, I began to extend various loans to Debtor. These loans totaled $168,000 and these loans were secured by Debtor's family residence with an annual interest rate of 10% amortized over 20 years.

4. On or about June 24, 1999, Debtor, Stephen Law, made, executed and delivered to me, in writing, a promissory note ("Note") for the principal sum of $168,000.00. In connection with the Note, Debtor also made, executed and delivered to me, as trustee and beneficiary, a deed of trust ("Trust Deed"), pledging Debtor's family residence commonly known as 16150 La Monde Street, Hacienda Heights, CA 91745, which bears APN 8205-012-009 ("Property").

Appendix K

5. Both the Note and the Trust Deed were recorded on or about June 28, 1999 with the Los Angeles County Recorder as Document #99-1179298. I am holding both of these documents.

6. I am, at all times herein mentioned was and is a citizen of the people's Republic of China, and, I have no address in the U.S., the recorded Deed of Trust provides Debtor's family residence as my address for the purpose of receiving the Trust Deed back from the Recorder's Office.

8. I hired Mr. Peter C. Chow as my attorney to represent me for the entitled matter and I have never hired Kenneth Gross or any other attorney.

9. I did not sign the declaration of February 23, 2005 and have not and will not enter into the Stipulation re Judgment with Plaintiff. I did sign the declaration in Support of the Motion to Set Aside a Default and Default Judgment.

10. Attached hereto is the copy of my Chinese identification.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in the City of Guangzhou, China.

DATED: March 10, 2005

BY: /s/_____
Lili Lin

Appendix K

DECLARATION OF PETER CHOW (APR. 2005)

DECLARATION OF PETER CHOW

I, Peter C. Chow, declare:

1. I am the attorney for Defendant Lili Lin and I am a member of the State Bar of California; I know the following facts to be true, and, if called upon to testify, I could and would testify competently to the following:

2. I was retained by Ms. Lili Lin to represent her in connection with the captioned case on September 3, 2004.

3. I am attaching an unsigned copy of Ms. Lin's declaration because the signed copy, although legible, but could be difficult to read due to the numerous fax transmission. The declaration was first transmitted via fax from our office to Ms. Lin in China for her signature and then she had to fax it back to our office.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

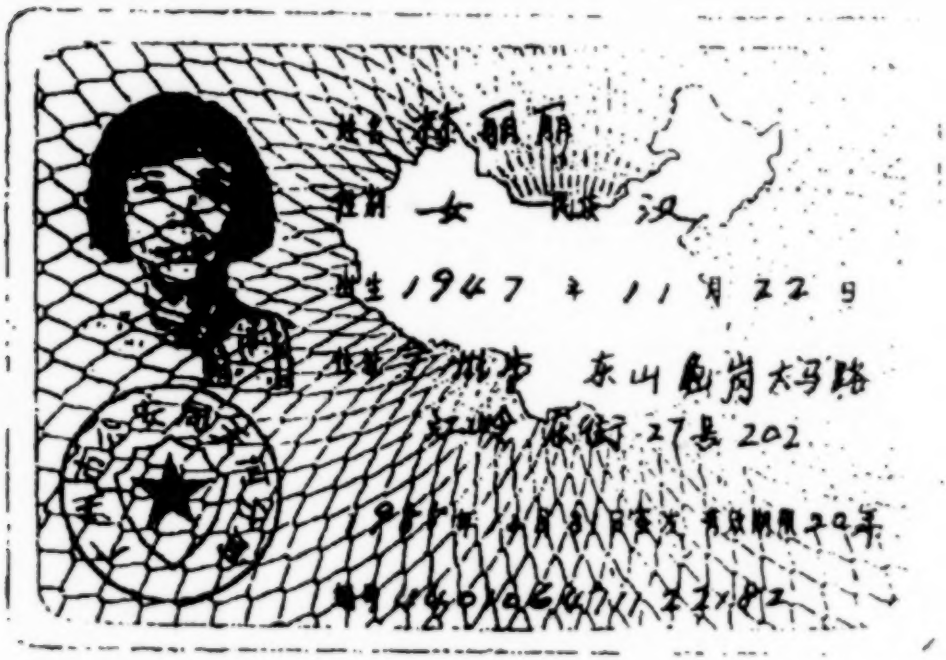
DATED: April 25, 2005

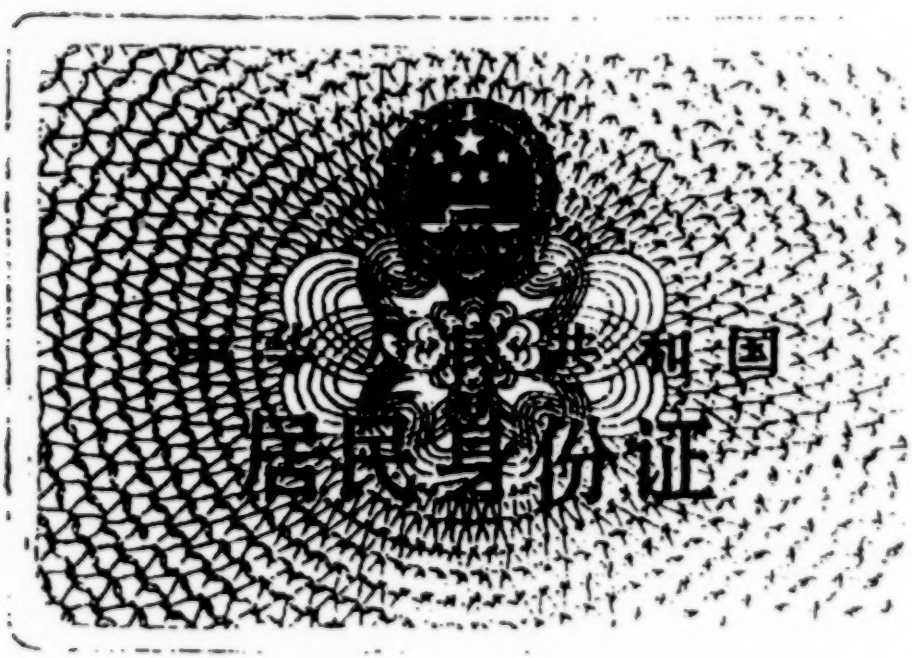
BY: /s/_____

Peter C. Chow
Declarant

Appendix K

EXHIBITS: LIN OF CHINA'S CHINESE IDENTIFICATION & ENGLISH TRANSLATION





Appendix K

Name: Lin. Lili

Sex: Female Ethnic Group: Han

Born on: Nov. 22, 1947

Address: 27 Jiangling Dongjie, #202
Guigang Damalu, Dongshan, Guangzhou

Seal:
Guangzhou Public Security Bureau
Tianhe Branch

Issued on: 12/31/1985 Valid for 20 years

PEOPLE'S REPUBLIC OF CHINA

RESIDENCE IDENTIFICATION CARD

Appendix K

CERTIFICATE OF TRANSLATION

I, the undersigned, am competent to translate from Chinese into English, and certify that the following attached direct translation is true and accurate to the best of my abilities.

Identification card of Ms. Lili Lin

Signed this 9th day of March 2005 at San Gabriel, California

/s/ _____ Henry Tang
Signature of Translator Typed name of Translator

APPENDIX L — EXHIBITS TO LIN OF CHINA'S MOTION FOR RECONSIDERATION OF ORDER GRANTING MOTION TO APPROVE COMPROMISE

DECLARATION OF STEPHEN LAW (MAY 2005)

DECLARATION OF STEPHEN LAW

I, Stephen Law, aka Zhanjun Luo, declare as follows:

I am the Debtor in the instant case number LA04-10052-TD, and I have personal knowledge of the facts set forth below and could and would testify competently thereto if called upon to do so.

On or about September 1968, Lili Lin of China and me and many of our school class mates went to a county of Dongwan in the People's Republic of China and working, studying and living together in the village of countryside until about 1973, we have been friends since 1968.

On February and March 1998, I got the various loans totaled of $168,000 from Lili Lin of China who wired the funds to my bank account from oversea, and the Note and Deed of Trust was recorded in Los Angeles county recorders' Office on or about June 28, 1999 as document No. 99-1179298.

I have no personal knowledge regarding the loan/Note sold to Connie Chang, nor "County Records Research" would be substituted as the trustee under the Trust Deed.

Appendix L

I have never received any letter, including letter of November 8, 2002 from Lili Lin of Artesia.

I did sued Lili Lin of Artesia in the Superior Court of California, Citrus District on June 21, 2000, case CIT 00J02121 and won the lawsuit.

I did not and never give any copy of said Deed of Trust to Lili Lin of Artesia.

I did delivered the original Note, Deed of Trust to Lili Lin of China on or about July 1999.

I declare under a penalty of perjury of the laws of the United States that above a statement and forgoing is true and correct, and this declaration is executed on May 25, 2005 at Hacienda Hts., California.

/s/_____
Stephen Law
Debtor Pro se

Appendix L

DECLARATION OF CONNIE CHANG (MAY 2005)

DECLARATION OF CONNIE CHANG

I, Connie Chang, declare as follows:

I am not the party in the instant case number LA04-10052-TD, and I have personal knowledge of the facts set forth below and could and would testify competently thereto if called upon to do so.

Lili Lin of China and I were school-classmate since 1962.

On or about November 1968, Lili Lin of China, I and Stephen Law (aka Zhanjun Luo) and many of our school class mates were sent to a county of Dongwan in the People's Republic of China by the Chinese government, and working, studying and living together in the village of countryside until about 1974, we have been school mate and friend since 1962.

I have more then five school mates in the U.S. can testify that Lili Lin and Stephen Law are closed friends since 1968 and I do have many of the pictures to show that we were working, studying and Living together in the village of countryside of Dongwan of China in 1968 and have been closed friend until present.

I do not have personal knowledge regarding the Note and the Trust Deed would sold to me, and I have not buy any of note or Trust Deed from Lili Lin of Artesia.

Appendix L

I have never request the "County Records Research" to send any document to Lili Lin of Artesia in any time in any place.

I declare under a penalty of perjury of the laws of the United States that above a statement and forgoing is true and correct, and this declaration is executed on May 27, 2005 at Los Angeles County Of California.

/s/_____
Connie Chang
Witness

Appendix L

DECLARATION OF LIN OF CHINA (MAY 2005)

DECLARATION OF LILI LIN

I, Lili Lin, declare as follows:

I am the Creditor/Defendant in the instant case No LA04-10052-TD and Adv. 04-01969, and I have personal knowledge of the facts set forth below and could and would testify competently thereto if - called upon to do so.

Debtor Stephen Law and I have been friends for over 30 years. Around 1998, I began to extend various loan to Debtor. These loan totaled $168,000 and were secured by Debtor's family residence

On or about June 1999, Debtor made, executed and delivered to me, in writing, Deed of Trust and a promissory note ("Note") for the principal sum of$168,000.00, as trustee and beneficiary, a Deed of Trust ("Trust Deed"), pledging Debtor's family residence commonly known as 16150 LaMonde St. Hacienda Heights, Ca 91745, which bears APN 8205-012-009. Both the Note and the Trust Deed were recorded on or about June 28, 1999, with the Los Angeles County Recorder as Document #99- 1179298,

I am holding both of these documents

I hired Mr. Peter C. Chow as my attorney to represent me for the entitled matter and I have never hired Kenneth Gross or any other attorney. I did not sign the declaration of February 23, 2005 and May 11 , 2005 and have not and

will not enter into the Stipulation re Judgment with the Plaintiff.

I did not sell the Note to any one, and I have no personal knowledge re "County Records Research" substituted in as the Trustee under the Trust Deed.

I declare under penalty of perjury that the forgoing is true and correct, and executed on May 26, 2005 at Guangzhou, China

/s/_____
Lili Lin
Creditor/Defendant pro se

Appendix L

SEE SUPPLEMENTAL APPENDIX

PAGES 18a - 19a

FOR

EXHIBIT A: LAW V. LIN—PLAINTIFF'S CLAIM AND ORDER TO DEFENDANT (SMALL CLAIMS)

EXHIBIT B: LAW V. LIN—JUDGMENT AND NOTICE OF ENTRY OF JUDGMENT

Appendix L

EXHIBIT C: LIN OF CHINA'S SEPT. 2004 ANSWER TO COMPLAINT TO AVOID AND RECOVER

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA,
LOS ANGELES DIVISION

In re
STEPHEN LAW, an individual
Debtor.
SSN xxx-xx-6513

ALFRED SIEGEL, Chapter 7 Trustee,

vs.

LILI LIN, an individual,

Defendant.

CASE NO.: LA04-10052-TD
Adv. No.: LA04-01969

Chapter 7

ANSWER

TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:

Defendant, Lili Lin, answers for herself alone as follows:

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1. Defendant, Lili Lin, is unable to admit or deny to the allegations as stated in paragraph 1 of the complaint.

2. Defendant, Lili Lin, is unable to admit or deny to the allegations as stated in paragraph 2 of the complaint.

3. Defendant, Lili Lin, admits to the allegations as stated in paragraph 3 of the complaint.

4. Defendant, Lili Lin, is unable to admit or deny to the allegations as stated in paragraph 4 of the complaint.

5. Defendant, Lili Lin, admits.

6. Defendant, Lili Lin, admits.

7. Defendant, Lili Lin, admits.

8. Defendant, Lili Lin, is unable to admit or deny to the allegations as stated in paragraph 8 of the complaint.

9. Defendant, Lili Lin, is unable to admit or deny to the allegations as stated in paragraph 9 of the complaint.

10. Defendant, Lili Lin, is unable to admit or deny to the allegations as stated in paragraph 10 of the complaint.

11. Defendant, Lili Lin, is unable to admit or deny to the allegations as stated in paragraph 11 of the complaint.

12. Defendant, Lili Lin, is unable to admit or deny to the allegations as stated in paragraph 12 of the complaint.

13. Denies.

14. Defendant, Lili Lin, is unable to admit or deny to the allegations as stated in paragraph 14 of the complaint.

15. Denies.

16. Denies.

17. Denies.

FIRST AFFIRMATIVE DEFENSE

18. Plaintiff's Complaint and all allegations as stated therein should be dismissed pursuant to FRCP 12(b).

SECOND AFFIRMATIVE DEFENSE

19. Plaintiff's Complaint and all allegations as stated therein should be dismissed due to the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

20. Plaintiff's Complaint and all allegations as stated therein should be dismissed due lache.

FOURTH AFFIRMATIVE DEFENSE

21. Plaintiff's Complaint and all allegations as stated therein should be dismissed because the promissory

note and deed of trust were made and executed for consideration.

Dated: September 07, 2004

Chow & Hamilton

/s/ _____
Peter Chow
Attorney for Defendant

Appendix L

EXHIBIT D: ORDER TO SHOW CAUSE RE LACK OF SERVICE

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re

STEPHEN LAW,

Debtor.

ALFRED SIEGEL,

Plaintiff,

vs.

LILI LIN,

Defendant.

Case No. LA 04-10052 TD

Adv. No. AD 04-01969

Chapter 7

ORDER TO SHOW CAUSE AND NOTICE OF CONTINUED STATUS CONFERENCE

Appendix L

Date: April 7, 2005
Time: 10:00 a.m.
Place: Courtroom 1345

TO THE PLAINTIFF, THE PLAINTIFF'S ATTORNEY, THE DEFENDANT, THE DEBTOR, THE UNITED STATES TRUSTEE, AND TO ALL OTHER PARTIES IN INTEREST IN THE ABOVE-CAPTIONED PROCEEDING:

NOTICE IS HEREBY GIVEN, AND IT IS HEREBY ORDERED that the above Plaintiff, and any other party in interest so disposed, show cause, if any there be at the time and place specified above, why this adversary proceeding should not be dismissed for lack of prosecution for failure of Plaintiff to serve the defendant with summons and complaint, as required by the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure not later than April 7, 2005.

FURTHER ORDERED that written responses, if any, to this Order To Show Cause shall be served upon all parties in interest and filed with the Clerk of this Court, with courtesy copies promptly delivered to chambers, not later than 10 days before the hearing date specified above, and any responses not so served and filed may, in the court's discretion, not be considered with respect to the issues presented by this Order To Show Cause.

Appendix L

FINALLY ORDERED that the status conference hearing is continued to April 7, 2005 at 10:00 a.m.

Dated: 12/3/04

/s/_____
THOMAS B. DONOVAN
United States Bankruptcy Judge

Appendix L

EXHIBIT E: STIPULATED JUDGMENT

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA,
LOS ANGELES DIVISION

In re

STEPHEN LAW, an individual

Debtor.

SSN XXX-XX-6513

ALFRED SIEGEL, Chapter 7 Trustee,

Plaintiff,

vs.

LILI LIN, an individual,

Defendant.

CASE NO. LA04-10052-TD
Adv. No. 04-01969

Chapter 7

Appendix L

STIPULATION RE JUDGMENT;
JUDGMENT THEREON
[11 U.S.C. §§ 544(b), 550, and 551]

[Lodged concurrently with Declaration of Defendant Lili Lin In Support of the Stipulation re Judgment]

DATE: [No hearing required]
TIME: [No hearing required]
PLACE: Courtroom 1345
U.S. Courthouse
255 East Temple Street
Los Angeles, CA 90012

IN SAID DISTRICT AT LOS ANGELES CALIFORNIA, ON THE DATE ASCRIBED BELOW,

Alfred Siegel, the duly appointed and acting chapter 7 trustee ("Plaintiff" or "Trustee") of the bankruptcy estate ("Estate") of the above-captioned debtor Stephen Law ("Debtor") in the instant bankruptcy case (the "Bankruptcy Case"), through his counsel Ezra | Brutzkus | Gubner, LLP ("EBG"), and Ms. Lili Lin, defendant ("Defendant") in the above-referenced adversary proceeding ("Adversary Proceeding") through her counsel Perliss and Gross, represent as follows in support of this Stipulation re Judgment:

WHEREAS, Defendant retained the law firm of Perliss and Gross to represent her in the Adversary Proceeding after being served with the Alias Summons and Notice of Status Conference dated December 22, 2004; and

Appendix L

WHEREAS, Defendant did not hire Peter C. Chow ("Chow") to represent her in the Adversary Proceeding and has never spoken to Chow; and

WHEREAS, Defendant did not loan the Debtor money as set forth in the Deed of Trust and Assignment of Rents ("Trust Deed") and Promissory Note for the principal sum of $168,000.00 ("Note") dated June 24, 1999, and recorded on or about June 28, 1999 with the Los Angeles County Recorder as Document # 99-1179298; and

WHEREAS, pursuant to said Trust Deed, the Debtor, as trustor, irrevocably granted, transferred, and assigned, to Defendant, as trustee and beneficiary, a valuable interest in the single family residential property commonly known as 16150 La Monde Street, Hacienda Heights CA 91745 which bears APN 8205-012-009 (the "Property") with power of sale (the "Transfer"); and

WHEREAS, Defendant does know the Debtor and the Debtor, on or about 1999, gave Defendant a copy of the Trust Deed and Note but never explained to her why he gave her the documents; and

WHEREAS, Defendant did not sign the Declaration of Lin in Support of the Motion to set Aside a Default and A Default Judgment which was filed in the Adversary Proceeding on September 1, 2004; and

NOW WHEREFORE, IT IS HEREBY STIPULATED by and between Plaintiff and Defendant, through their respective counsel, as follows:

Appendix L

1. The Debtor currently owns the Property in fee simple.

2. The Debtor, for no consideration, made and executed, in writing, the Note for the principal sum of $168,000.00. To secure the alleged obligations contained in the Note, the 6 Debtor made, executed and delivered to Defendant a copy of the Note and Trust Deed.

3. Pursuant to the Debtor's Schedules filed in the Bankruptcy Case, the Property constituted all or substantially all of the Debtor's assets.

4. The Court may take judicial notice of the fact that the Adversary Proceeding was brought within one year of the January 5, 2004 petition date (the "Petition Date"), and as such the Adversary Proceeding was brought within one year after the Transfer could reasonably have been discovered by the Trustee.

5. Pursuant to the Debtor's Schedules filed in the Bankruptcy Case, Providian National Bank is an unsecured creditor of the Estate holding an allowable claim under 11 U.S.C. § ("Section") 502. Providian National Bank was a creditor of the Debtor at the time of the Transfer which is voidable by Providian National Bank under the Uniform Fraudulent Transfer Act of the State of California.

6. The Defendant is a completely innocent party who had no actual intent to hinder, delay, or defraud the Debtor's creditors. No monetary damages of any sort are therefore sought or shall be assessed against Defendant.

7. By reason of the foregoing, the Transfer will be avoided pursuant to Section 544(b) and Cal. Civ. Code § 3439.04(a) and the Trust Deed and Note will be recovered and assigned to the Plaintiff pursuant to Section 550(a) and preserved for the benefit of the Estate under Section 551.

8. It is hereby requested that the Court enter a judgment in the Adversary Proceeding as stated below:

Dated: February 17, 2005

/s/_____
Lili Lin

Dated: February 28, 2005

/s/_____
Alfred Siegel, Plaintiff
and Chapter 7 Trustee

Approved as to form and content:

Dated: February 28, 2005

EZRA | BRUTZKUS | GUBNER, LLP

By: /s/_____
Wesley H. Avery
Counsel for Plaintiff and
Chapter 7 Trustee, Alfred Siegel

Appendix L

Dated: February __, 2005

PERLISS AND GROSS
By: /s/_____
Kenneth I. Gross
Counsel for Defendant Lili Lin

JUDGMENT

Based on the foregoing Stipulation re Judgment, the Court renders the following judgment in adversary proceeding number 04-01969:

1. The Debtor currently owns in fee simple that single family residential property commonly known as 16150 La Monde Street, Hacienda Heights CA 91745 which bears APN 8205-012-009 (the "Property").

2. The Debtor, for no consideration, made and executed, in writing, a Promissory Note dated June 24, 1999 (the "Note") for the principal sum of $168,000.00 To secure the alleged obligations contained in the Note, the Debtor made, executed and delivered to Defendant a Deed of Trust and Assignment of Rents, dated June 24, 1999, and recorded on or about June 28, 1999 with the Los Angeles County Recorder as Document# 99-1179298 ("Trust Deed").

3. Pursuant to said Trust Deed, the Debtor, as trustor, irrevocably granted, transferred, and assigned, to Defendant, as trustee and beneficiary his valuable interest in the Property, with power of sale (the "Transfer").

4. The Property constituted all or substantially all of the Debtor's assets.

5. The Transfer was discovered by the Trustee shortly after the Petition Date, at the first instance it could have been discovered, which was within one year after the Transfer could reasonably have been discovered by the Trustee.

6. Providian National Bank is an unsecured creditor of the Estate holding allowable claims under 11 U.S.C. § ("Section") 502. Providian National Bank was a creditor of the Debtor at the time of the Transfer which is voidable by Providian National Bank under the Uniform Fraudulent Transfer Act of the State of California.

7. The Transfer was made by the Debtor with the actual intent to hinder, delay, or defraud the Debtor's creditors. The Defendant, however, is an innocent party who had no actual intent to hinder, delay, or defraud the Debtor's creditors.

8. By reason of the foregoing, the Transfer is avoided pursuant to Section 544(b) and Cal. Civ. Code § 3439.04(a).

9. The Deed of Trust and Assignment of Rents and Promissory Note for the principal sum of $168,000.00 dated June 24, 1999 and recorded on or about June 28, 1999 with the Los Angeles County Recorder as Document # 99-1179298 is hereby recovered by and assigned to the Plaintiff pursuant to Section 550 (a) and preserved for the benefit of the Estate under Section 551.

10. No monetary damages of any sort are assessed against Defendant.

Dated: May 18, 2005

/s/_____
Honorable Thomas B. Donovan
United States Bankruptcy Court Judge

Appendix L

EXHIBIT F: ORDER GRANTING MOTION TO APPROVE COMPROMISE OF CONTROVERSY

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA,
LOS ANGELES DIVISION

In re
STEPHEN LAW, an individual,

Debtor.

SSN xxx-xx-6513

Case No. LA04-10052-TD
Chapter 7

ORDER GRANTING MOTION TO APPROVE COMPROMISE OF CONTROVERSY [Fed. R. Bankr. P. 9019]

Date: May 18, 2005
Time: 10:30 A.M.
Place: Courtroom 1345
U.S. Bankruptcy Court
255 East Temple Street
Los Angeles, CA 90012

IN SAID DISTRICT, AT LOS ANGELES, CALIFORNIA, ON THE DATE ASCRIBED BELOW:

Appendix L

The motion ("Motion") filed on April 19, 2005 by Alfred H. Siegel, the duly appointed chapter 7 trustee (the "Trustee" or "Siegel") of the bankruptcy estate (the "Estate") of the above-captioned debtor (the "Debtor") whose bankruptcy case is styled *In re Stephen Law, an individual,* Case No. LA04-10052-TD (the "Bankruptcy Case"), for the issuance of an order approving that written compromise of controversy (the "Stipulated Judgment"), a true and correct copy of which is attached to the Motion as **Exhibit "1"**, came on generally for hearing at the date, time and courtroom stated above. Wesley H. Avery, Esq. appeared on behalf of the Trustee. The Debtor appeared pro per. Peter Chow, Esq. appeared on behalf of Lili Lin (China). Upon a review of the Motion, the Oppositions filed by the Debtor and Lili Lin of China, and the oral argument of counsel and the Debtor, the Court found: (1) that the Debtor and Lili Lin of China lack standing to oppose the Motion, (2) that the Trustee's evidentiary objections should be sustained, and (3) the Trustee's evidence provides good cause to grant the Motion and approve the Stipulated Judgment as it is fair and equitable and in the best interests of the Estate. Wherefore, it is hereby

ORDERED that the Motion is granted and the Stipulated Judgment is approved.

Dated: May 25, 2005 /s/_____

Honorable Thomas B. Donovan
United States Bankruptcy Judge

Appendix L

Respectfully submitted by,

EZRA | BRUTZKUS | GUBNER LLP

/s/_____
Wesley H. Avery
Talin Keshisian
Ainat Kiewe
Attorneys for Alfred Siegel, Chapter 7 Trustee

Appendix L

EXHIBIT G: LIN OF CHINA'S MAY 2005 ANSWER TO COMPLAINT TO AVOID AND RECOVER

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re

Stephen Law, an individual

Debtor,

SSN xxx-xx-6513

Alfred H. Siegel, Chapter 7 Trustee,

Plaintiff,

vs.

Lili Lin, an individual,

Defendant.

CASE NO.: LA04-10052-TD
Chapter 7

Adv. No. 04-01969

Appendix L

ANSWER TO COMPLAINT

TO THE PLAINTIFF AND ITS ATTORNEYS OF RECORD:

Defendant, Lili Lin answers the complaint to Avoid and Recover Fraudulent Transfer filed by Alfred Siegel, plaintiff as follows:

1. Defendant lacks sufficient information to admit or deny the paragraph 1 of the complaint.

2. Defendant lacks sufficient information to admit or deny the paragraph 2 of the complaint.

3. Defendant admits the paragraph 3 of the complaint.

4. Defendant lacks sufficient information to admit or deny the paragraph 4 of the complaint.

5. Defendant admits the paragraph 5 of the complaint.

6. Defendant admits the paragraph 6 of the complaint.

7. Defendant admits the paragraph 7 of the complaint.

8. Defendant lacks sufficient information to admit or deny the paragraph 8 of the complaint.

9. Defendant lacks sufficient information to admit or deny the paragraph 9 of the complaint.

10. Defendant lacks sufficient information to admit or deny the paragraph 10 of the complaint.

11. Defendant lacks sufficient information to admit or deny the paragraph 11 of the complaint.

12. Defendant lacks sufficient information to admit or deny the paragraph 12 of the complaint.

13. Defendant denies the paragraph 13 of the complaint.

14. Defendant lacks sufficient information to admit or deny the paragraph 14 of the complaint.

15. Defendant denies the paragraph 15 of the complaint.

16. Defendant denies the paragraph 16 of the complaint.

17. Defendant denies the paragraph 17 of the complaint.

FIRST AFFIRMATIVE DEFENSE

18. Plaintiff's complaint and all allegations stated therein should be dismissed pursuant to FRCP 12(b) and 11 U.S.C. section 548 and Cal. Civ. Code section 3439.09. Due to the statute of limitations

Appendix L

SECOND AFFIRMATLVE DEFENSE

19. Plaintiff's complaint and all allegations as stated therein should be dismissed due laches.

THIRD AFFIRMATIVE DEFENSE

20. Plaintiff's complaint should be dismissed because it was filed in bad faith.

THIRD AFFIRMATIVE DEFENSE

21. Plaintiff's complaint should be dismissed because the promissory note and Deed of Trust were made and executed for consideration.

FOURTH AFFIRMATIVE DEFENSE

22. Plaintiff's complaint should be dismissed because barred by the doctrine of unclean hands and conspiracy.

Dated: May 25, 2005

/s/_____
Lili Lin
Defendant Pro per

Appendix L

EXHIBIT H: DECLARATION OF LIN OF ARTESIA (MAY 2005)

DECLARATION OF LILI LIN

I, Lili Lin, declare as follows:

1. I am a defendant in adversary proceeding number 04-01969, (the "Adversary Proceeding"). I have personal knowledge of the facts set forth below and could and would testify competently thereto if called upon to do so.

2. I did not loan Stephen Law money as set forth in the Deed of Trust and Assignment of Rents ("Trust Deed") and Promissory Note for the principal sum of $168,000.00 ("Note") dated June 24, 1999 and recorded on or about June 28, 1999 with the Los Angeles County Recorder as Document # 99-1179298.

3. I know Stephen Law and on or about June 28, 1999, he gave me a copy of the Trust Deed and Note. Pursuant to the Trust Deed Stephen Law, as trustor, irrevocably granted, transferred, and assigned, to me, as trustee and beneficiary his valuable interest in the real property located at 16150 La Monde Street, Hacienda Heights CA 91745 which bears APN 8205-012-009 (the "Property"), with power of sale.

4. On or about February 22, 2000 I received a series of documents in the mail from County Records Research (the "Documents") which requested my signature on numerous forms in order to undertake the following:

Appendix L

a. Assign my interest in the Note to Connie Chang. I am informed and believe that Connie Chang is Stephen Law's ex-wife.

b. Substitute the entity "County Records Research" as the trustee under the Trust Deed.

c. Foreclose on the Property and sell the Property to satisfy the obligations secured by the Trust Deed.

A true and correct copy of the Documents are attached hereto as Exhibit 7.

5. A post-it note in Mandarin from Stephen Law was attached to the document I received entitled Substitution of Trustee. This document substituted County Records Research as trustee under the Trust Deed. The post-it note states that "only this copy needs to be signed by the bank notary on page 2." A true and correct copy of the post-it note from Stephen Law is attached hereto as Exhibit 8.

6. I did not sign any of the Documents.

7. On or about March 23, 2000 I received correspondence from County Records Research (the "March 23, 2000 Letter") which requested that I sign the Documents so that they can begin foreclosure proceedings on the Property. A true and correct copy of the March 23, 2000 Letter is attached hereto as Exhibit 9.

Appendix L

8. On or about November 8, 2002, I wrote Stephen Law a letter (the "November 8, 2002 Letter") which, *inter alia*,: (1) notified him that the Trust Deed was false and unsubstantial, (2) refused to allow him to send me a check for $168,000 to endorse back to him, (3) stated that I never loaned him $168,000 as set forth in the Trust Deed, (4) stated that I never received a monthly payment in amount of $1,622 as set forth in the Trust Deed, and (5) stated that the false Trust Deed was creating a serious problem for me including concerns about a tax audit by the IRS. A true and correct copy of the November 8, 2002 Letter is attached hereto as Exhibit 10.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 11th day of May, 2005, at Los Angeles, California.

/s/_____
Lili Lin

APPENDIX M — SELECT EXHIBITS TO LIN OF CHINA'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION

DECLARATION OF LIN OF CHINA (JUNE 2005)

DECLARATION OF LILI LIN

I, Lili Lin, declare as follows

I am the secured Creditor/Defendant in the instant case No LA04-10052-TD and Adv 04-01969, and I have personal knowledge of the facts set forth below and could and would testify competently thereto if called upon to do so.

I have owned 100% share of Lin's mortgage & Associates.

I hired Mr. Peter C. Chow as my attorney to represent me for the entitled matter and I have never hired Kenneth Gross or any other attorney. I did not sign the declaration of February 23, 2005 and May 11, 2005 and have not and will not enter into the Stipulation re Judgment with the Plaintiff.

I was substituted as pro se in the instant case and in place and stead of attorney Peter Chow who consent to the substitution since May 23, 2005. (see **Exhibit D** as Substitution of Attorney)

I did not sell the note of $168,000 to any one, and I have no personal knowledge re "County Records Research" substituted in as the Trustee under the Trust Deed.

Appendix M

I have spent more than $10,000 defending myself in this actions and in related actions due to the adversary action brought by the plaintiff Chapter 7 trustee

I have not got the visa go to the U. S., therefore, I request the court to continue the motion at less one month and notify me in the U.S. address at 2345 Los Padres Dr. Rowland Hts, CA 91748.

I declare under penalty of perjury that the forgoing is true and correct, and executed on June 26, 2005 at Guangzhou, China.

/s/ _____

Lili Lin Creditor/Defendant pro se

Appendix M

DECLARATION OF STEPHEN LAW (JUNE 2005)

DECLARATION OF STEPHEN LAW

I, Stephen Law, aka Zhanjun Luo, declare as follows:

I am the Debtor in the instant case number LA04-10052-TD, and I have personal knowledge of the facts set forth below and could and would testify competently thereto if called upon to do so.

I did not and never give any copy of said Deed of Trust to Lili Lin of Artesia. I have no personal knowledge regarding the loan/Note sold to Connie Chang, nor "County Records Research" would be substituted as the trustee under the Deed of Trust.

I have never received any letter, including letter of November 8, 2002 from Lili Lin of Artesia.

I did sued Lili Lin of Artesia in the Superior Court of California, Citrus District on June 21, 2000, case CIT 00J02121 and I won the lawsuit.

I did write a letter dated June 20, 2000, (**see Exhibit E** as true and correct copy of the letter) to Lili Lin of Artesia regarding LASC case CIT00J02121 and loan of $168,000, and personal served on Lili Lin of Artesit on June 21, 2000 by the legal process server Dong Ho. (see attached Declaration of Dong Ho) I have never reside at 2345 Los Padres Dr. Rowland Hts, Calif.

Appendix M

My credit card account of Providian Bank No. 4361450400822385 was opened on October of 2000 and recent discovered that it had been paid off by other lender on or about November/December 2003, just before my petition was filed according to my Trans Union credit report.

I declare under a penalty of perjury of the laws of the United States that above a statement and forgoing is true and correct, and this declaration is executed on June 24, 2005 at Hacienda Hts., California.

/s/_____

Stephen Law Witness/Debtor

Appendix M

DECLARATION OF DONG HO (JUNE 2005)

DECLARATION OF DONG HO

I, Dong Ho, declare as follows:

I am over the age of 18 years and not the party in the instant case number LA04-10052-TD, and I have personal knowledge of the facts set forth below and could and would testify competently thereto if called upon to do so.

On June 21, 2000, at about 3:42 p.m. I personally delivered a letter of June 20, 2000 of Stephen Law to Lili Lin, and the copy of complaint/claim of Plaintiff Stephen Law, Los Angeles Superior Court's case No. CIT 00J02121 to Ms. Lili Lin at 18425 Gridley Road, Cerritos, California 90701.

I declare under a penalty of perjury of the laws of the United States that above a statement and forgoing is true and correct, and this declaration is executed on June 24, 2005 at Los Angeles County Of California.

/s/_____

DongHo Witness

Appendix M

EXHIBIT D: SUBSTITUTION OF ATTORNEY FOR LIN OF CHINA

Attorney or Party Name, Address, Telephone and Fax Number, and California State Bar Number

Lili Lin
2345 Los Padres Dr.
Rowland Heights, CA 91748
(626)333-0196

Creditor/Defendant Pro se

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re:

Stephen Law

Debtor.

Alfred H. Siegel,

Plaintiff(s),

vs.

Lili Lin

Defendant(s).

Chapter 7
Case Number LA 04-10052 TD

x Adversary Number (If Applicable)
04-01969

Appendix M

SUBSTITUTION OF ATTORNEY

1. The name of the party making this Substitution of Attorney is *(specify name)*: Lili Lin

2. The name, address and telephone number of the New Attorney are *(specify)*:
   2345 Los Padres Dr.
   Rowland Hts, CA 91748

3. New Attorney hereby appears in the following matters:
   _x_ The case
   _x_ The above adversary Proceeding

4. The New Attorney is substituted as attorney of record in place and stead of the Present Attorney. *(Specify name of Present Attorney)*: Peter C. Chow

Dated: May 23, 2005

Lili Lin	/s/
Type Name of Party	Signature of Party

I consent to the above substitution

Dated: May 23, 2005

Peter C. Chow	/s/
Type Name of Present Attorney	Signature of Present Attorney

Appendix M

I am duly admitted to practice in this district. The above substitution is accepted.

Dated: May 23, 2005

Lili Lin
Type Name of Creditor/Defendant

/s/
Signature of Creditor/Defendant

IMPORTANT NOTICE

The filing of the within Substitution of Attorney form does not obviate the need to be employed pursuant to the Bankruptcy Code. See Local Bankruptcy Rule 2090-1(f)(5) regarding the requirements and procedures for making an application to employ an attorney.

PROOF OF SERVICE

STATE OF CALIFORNIA COUNTY OF Los Angeles

I am employed in the above County, State of California. I am over the age of 18 and not a party to the within action. My business address is as follows: 2345 Los Padres Dr. Rowland Hts, CA 91748

On June 28, 2005, I served the foregoing document described as: SUBSTITUTION OF ATTORNEY on the interested parties at their last known address in this action by placing a true and correct copy thereof in a sealed envelope with postage thereon fully prepaid in

the United States Mail at L.A. , California, addressed as follows: * *

x Addresses continued on below * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 28, 2005

C. Chang /s/
Type Name Signature

**

Office of the U.S. Trustee
725 S. Figueroa St. 26th Fl
Los Angeles, CA 90017

Alfred H. Siegel
15233 Ventura Bl 9th Fl
Sherman Oaks, CA 91403

Wesley H. Avery Esp.
EZRA/BRUTZKUS/GUBNER LLP
16830 Ventura Bl. #310
Encino, CA 91436

Kenneth I. Gross Esq
555 South Flower St.#4220
Los Angeles, CA 90071

Appendix M

EXHIBIT E: LETTER FROM LAW TO LILI LIN (JUNE 2000)

Stephen Law
16150 La Monde St.
Hacienda Hts, CA 91745
June 20, 2000

Lili Lin
18425 Gridley Road
Cerritos, CA90701

By Personal hand delivered

Re: LASC case No. CIT00J02121 and loan of $168,000.

Dear Lili Lin:

Please be advised that as I told you hundred times that I got the loan of $168,000 from my friend Lili Lin who has been lived in China, mere coincidence, you have the same English name as my lender Lili Lin, but you are not the Lender Lili Lin loaned me the money, but you always have bad imagination that you owned the note of $168,000.00 and you yelled at me and even you threatened me for $100,000.00, your are very greedy for money, I think you should go to see the doctor.

Now, my legal process server will serve you this letter along with the Superior court complaint/Claim for you breached of contract. This is just the beginning, if you fraudulently claim you are the lender loaned me the

Appendix M

$168,000. The lender Lili Lin and I have no alternative but forced to file another lawsuit against you.

I think you should get some advices from attorney and doctor.

Very truly yours,

/s/ _____
Stephen Law

APPENDIX N — SELECT EXHIBITS TO LAW'S OPPOSITION TO TRUSTEE'S FIRST MOTION TO SURCHARGE

DECLARATION OF STEPHEN LAW (JAN. 2006)

DECLARATION OF STEPHEN LAW

I, Stephen Law, aka Zhanjun Luo, declare:

I am the Debtor in the instant case and familiar with the facts and if called upon to testify, could and would testify competently from my personal knowledge as to the matter stated with this declaration.

On or about February and March 1998, Creditor Lili Lin ("Lin of China") began to extend various loans totally $168,000 to me by wired the funds to my California Federal Bank account withdrawing from her Bank of China account from oversea. True and correct copies of the Bank of China and California Federal Bank Statements are attached hereto as **Exhibit A**.

On or about June 1999, I made, executed and delivered to Lin of China, in writing, Deed of Trust and a promissory note ("Note") which clearing shown that Lili Lin's birth day is November 22, 1947 as her Identification Card, for the principal sum of $168,000.00, as trustee and beneficiary, a Deed of Trust ("Trust Deed"), pledging Debtor's family residence. The Trust Deed was recorded on June 28, 1999, with the Los Angeles County Recorder Office as Document #99-1179298; true and correct copies of the Note and Lin's ID card and Debtor's house payment $1622 to the Note are attached hereto as **Exhibit B**.

Appendix N

On October 27, 2006, the Debtor's Notice of Change Address has been filed in the Court and served on all the interest parties including Chapter 7 Trustee and his attorney. (See **Exhibit C**)

Up to this date, I have not received either the motion for surcharge or motion to sell real property, Attorney Andrew Smyth informed me and fax some of motion papers to me on January 13, 2006. (See the **Exhibit D** as the Proof of Service for the motion) and **Andrew Smyth's Declaration**.

In order to prepare this opposition, Debtor has incurred expense of $130 and $1000 for consultation to prepare this opposition from attorneys.

I declare under a penalty of perjury of the laws of the United States that the forgoing is true and correct, and this declaration executed on the 17th of January 2006 at Baldwin Park, California.

/s/ _____
Stephen Law Debtor pro per

Appendix N

DECLARATION OF ANDREW SMYTH (JAN. 2006)

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA,
LOS ANGELES DIVISION

Case No. LA04-10052TD

Chapter 7

DECLARATION OF ANDREW SMYTH

Date: February 1, 2006
Time: 10:30 am
Place: Courtroom 1345

Re: Stephen Law, an individual,

Debtor,

DECLARATION OF ANDREW SMYTH

I, Andrew E. Smyth, declare:

I am the attorney of record for Lili Lin on Appeal only, I have personal knowledge of the facts set forth below and could and would testify competently thereto if called upon to do so.

I am not the attorney of record for Stephen Law and Lili Lin in the bankruptcy Court. The last appearance

Appendix N

I made in the Court on August 3, 2005 was for Special Appearance of Debtor.

I received a Notice of Change Address from Debtor on about October 28, 2005. I declare under penalty of perjury that the forgoing is true and correct. Executed on the 17th of January, 2006 at Los Angeles, California.

/s/_____
ANDREW E. SMYTH Declarant

Appendix N

SEE SUPPLEMENTAL APPENDIX

PAGES 20a - 26a

FOR

EXHIBIT A: BANK STATEMENTS & RECEIPTS

EXHIBIT B: PROMISSORY NOTE AND
DEBTOR'S PAYMENTS ON THE NOTE

Appendix N

Saving Account
Account Number: 472801-0188-051248-7

Account Holder: Li Li Lin

BANK OF CHINA

Withdraw by password only

SEAL: LIWAN SUBBRANCH
BANK OF CHINA

1996/09/19
ISSUE DATE: BANK SIGNATURE:

Appendix N

CERTIFICATE OF TRANSLATION

I, the undersigned, am competent to translate from Chinese into English, and certify that the following attached direct translation is true and accurate to the best of my abilities.

Bank book of Bank of China for Ms. Lili Lin

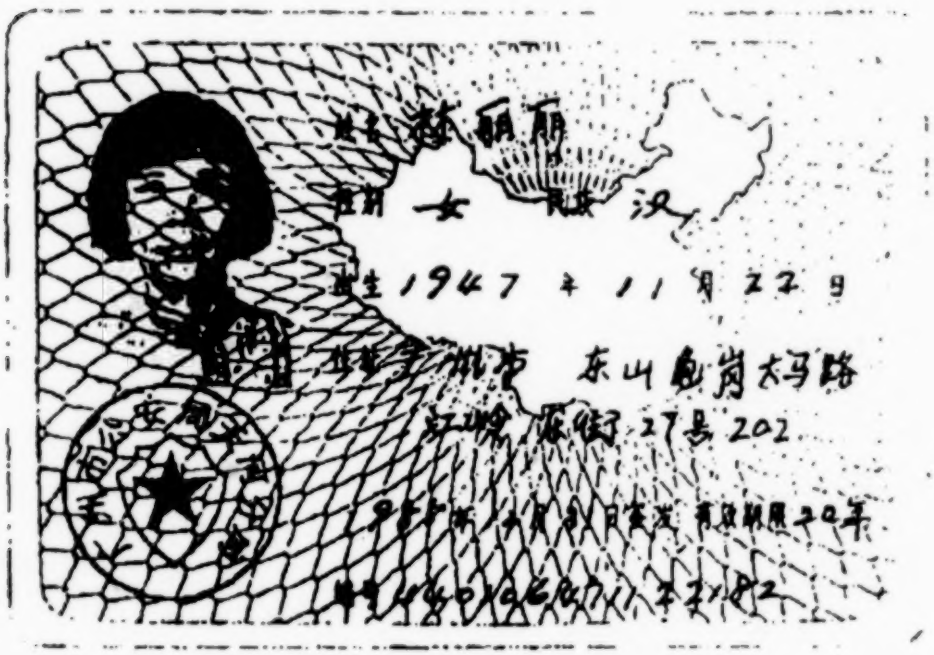
Signed this 12th day of September 2005 at Alhambra, California.

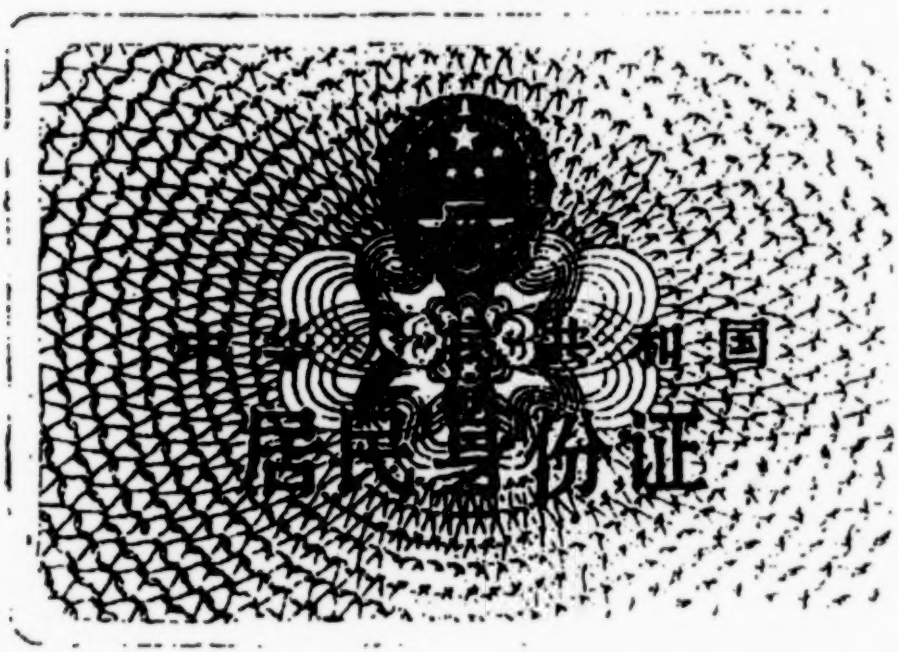
/s/_____
Signature of translator

Jean Li_____
Typed name of Translator

Appendix N

EXHIBIT B: LIN OF CHINA'S ID CARD





Appendix N

Name: Lin. Lili

Sex: Female Ethnic Group: Han

Born on: Nov. 22, 1947

Address: 27 Jiangling Dongjie, #202
Guigang Damalu, Dongshan, Guangzhou

Seal:
Guangzhou Public Security Bureau
Tianhe Branch

Issued on: 12/31/1985 Valid for 20 years

PEOPLE'S REPUBLIC OF CHINA

RESIDENCE IDENTIFICATION CARD

Appendix N

CERTIFICATE OF TRANSLATION

I, the undersigned, am competent to translate from Chinese into English, and certify that the following attached direct translation is true and accurate to the best of my abilities.

Identification card of Ms. Lili Lin

Signed this 9th day of March 2005 at San Gabriel, California.

/s/_____ Henry Tang
Signature of translator Typed name of Translator

APPENDIX O — DECLARATION OF STEPHEN LAW IN SUPPORT OF LAW'S OPPOSITION TO TRUSTEE'S MOTION TO SELL REAL PROPERTY FREE OF ENCUMBRANCES (JAN. 2006)

DECLARATION OF STEPHEN LAW

I, Stephen Law, aka Zhanjun Luo, declare:

I am the Debtor in the instant case and familiar with the facts and if called upon to testify, could and would testify competently from my personal knowledge as to the matter stated with this declaration.

On or about February and March 1998, Lili Lin began to extend various loans totally $168,000 to me by wired the funds to my California Federal Bank account withdrawing from her Bank of China account oversea. True and correct copies of the Bank of China and California Federal Bank Statements are attached hereto as **Exhibit F**.

On or about June 1999, I made, executed and delivered to Lin, in writing, Deed of Trust and a promissory Note which clearing shown that Lili Lin's birth day is November 22, 1947 as shown on her ID Card, for the principal sum of $168,000.00, as trustee and beneficiary. The Trust Deed was recorded on June 28, 1999, with the Los Angeles County Recorder Office as Document #99-1179298; true and correct copies of the Note and Lin's ID card are attached hereto as **Exhibit G**.

Appendix O

On September 25, 2005, I wrote and faxed a letter to Trustee's attorney. (See **Exhibit J**)

On September 26, 2005, trustee replied my letter rejected my good faith offer. (See **Exhibit K**)

On October 10, 2005, I wrote and faxed my other letter to trustee's attorney. (See **Exhibit L**)

On October 27, 2006, the Notice of Change Address has been filed in the Court and served on all the interest parties including Chapter 7 Trustee and his attorney. (See **Exhibit M**)

On November 5, 2005, I wrote other letter to trustee's attorney. (See **Exhibit N**)

Up today, I have not received either the motion for surcharge or motion to sell real property from the Trustee, Andrew Smyth informed me and fax some papers to me on 1/13/2006. (See **Exhibit O**)

I declare under a penalty of perjury of the laws of the United States that the forgoing is true and correct, and this declaration executed on the 16th of January 2006 at Baldwin Park, California.

/s/ _____

Stephen Law Debtor pro per

APPENDIX P — SELECT EXHIBITS SUPPORTING TRUSTEE'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO SURCHARGE

SEE SUPPLEMENTAL APPENDIX

PAGES 27a - 33a

FOR

EXHIBIT 2: SELLER FINAL CLOSING STATEMENT

EXHIBIT 5: DEED OF TRUST & PROMISSORY NOTE

APPENDIX Q — SELECT EXHIBIT TO TRUSTEE'S COMPLAINT FOR DECLARATORY RELIEF AGAINST LIN OF CHINA

Lili Lin
P.O. Box 592
Artesia, CA 90702-0592

November 8, 2002

Zhanjun Luo
16150 La Monde St
Hacienda Heights, CA 91745

RE: Documents of Deed of Trust

Mr. Luo:

I had been reviewing the documents of 2nd Deed of trust for the property at 16150 La Monde Street, Hacienda Heights, CA 91745, where was using my name as the trustee and recorded in the office of the county recorder of LA County on June 24, 1999.

Base on the fact that those documents are false and non-substantial, therefore, I am unable to commit the act of wrong doing as what you requested that you attempt to send me a check with the total amount of US 168,000.00 dollars and endorse it back to you, in order to pay off this loan and release the 2nd deed of trust.

With the fact that I've never agreed and signed these documents due to the following reasons:

Appendix Q

1. I've never borrowed money to you with the amount of US 168,000.00 dollars as the 2nd deed of trust loan.

2. I've never received any of 240 monthly installments of US 1'622.00 dollars, which including principle and interest which IRS may question about.

I am very unhappy and distressful that these false documents may create a serious problem to me including the concerns to my personal financial status and the high possibility of tax audit by IRS.

In order to correct and to solve this problem legally, please be advised that to consult your attorney or financial consultant immediately to correct this wrong act. You may send me the corrected documents or papers, which can be able to prevent me to get involved any possibility of tax audit by IRS.

After you send me those documents, I'll consult my attorney to check it over, if it is satisfied with the concern above, I'll be agreeable to sign off the deed of trust. Please send all written documents to the P.O. Box mailing address above. Please do not contact me directly, I will not accept any verbal discussion by person or by phone.

Thank you for your anticipate cooperation.

Sincerely yours,

/s/ _____
Lili Lin

APPENDIX R — SELECT EXHIBITS TO LAW'S REPLY SUPPORTING SECOND MOTION FOR ORDER TO PAY HOMESTEAD EXEMPTION

DECLARATION OF STEPHEN LAW (OCT. 2007)

DECLARATION OF STEPHEN LAW

I, Stephen Law, aka Zhanjun Luo, declare as follows:

I am the Debtor in the instant cases and I have personal knowledge of the facts set forth below and could and would testify competently thereto if called upon to do so.

On December 29, 2006, the BAP order reversed the order of bankruptcy court re surcharged debtor's homestead exemption of $75,000. On December 30, 2006, I wrote a letter to Trustee's attorney, and made good faith offer that requested trustee to pay the $75,000 without court's intervention.

On September 12, 2007, the hearing for debtor's motion for reconsideration of the order denying the motion for order to pay costs on the appeal. Judge Donovan said "*I don't have those records. I've never seen those records.* (Debtor's California Federal Bank statements showing the two wire transfers to the his Bank) MR. LAW: *I think you're very confusing. That's a long time ago. I can even show you the original.* THE COURT: *Well, this is not the time. So I--.* MR. LAW: *I see you forgot. You're confusing. That's the statement for the schedule—bank in United States, the statement I have. Maybe you forgot*

or something like that. THE COURT: *Maybe so, Maybe so, but what I do know, just from my general experience, is that the United States has very stringent currency restrictions and you can't move $168,000 into the United States without accounting for it.*

Attached hereto marked as **Exhibit F** are the correct and true copy of Debtor's California Federal Bank statements showing the wire transfers and incoming wire transfer fee be charged by the bank, and as matter of fact, those bank statements has been sublimed to the Court **more than ten times**.

On October 5, 2007, the BAP issued a Judgment and Memorandum decision which reversed and remanded to the Court said court's order denying the Debtor's motion for an order directing the trustee to pay debtor's claimed homestead exemption of $75,000. (Trustee's Exhibit 5 of his Opposition)

On October 11, 2007, I wrote a letter to trustee's attorney, confirmed that trustee still refused to comply with the orders of BAP to pay homestead. (**Exhibit J** as the copy of the letter)

I declare under a penalty of perjury of the laws of the United States that the forgoing is true and correct, and this declaration is executed on the 30st of October 2007, in City of Industry, California.

/s/_____
Stephen Law
Debtor/Movant pro se

Appendix R

DECLARATION OF LIN OF CHINA (SEPT. 2007)

DECLARATION OF LILI LIN

I, Lili Lin, declare as follows:

I am a creditor in the bankruptcy court case of LA04-10052-TD and the defendant in adversary proceeding cases of 07-01102-TD and 04-01969TD, I have personal knowledge of the facts set forth below and could and would testify competently thereto if called upon to do so.

Connie Chang and I are school-classmate since 1962.

On or about November 1968, Connie Chang, Stephen Law (aka Zhanjun Luo) and I and many of our school classmate were sent to a County of Dongguan in the People's Republic of China by the Chinese government, and working, studying and living together in the village of countryside until about 1974, we have been school mate and best friend until present.

I do have more than five school mates and friends in the United States can testify that Connie Chang, Stephen Law and me are closed friends and working, studying and living together in the village of countryside of Dongguan until about 1974, and I do have many of the pictures to show to the court that we were working, studying and living together in the village of countryside of Dongguan of China in 1968 and have been best and closed friends until present.

Appendix R

On or about February and March of 1998, I and Stephen Law both told Connie Chang that Stephen Law borrow USD $168,000 from me for the personal loan as second mortgage loan on Stephen Law's real property located at 16150 LaMonde Street, Hacienda Heights, California, and on or about February and March 1998, I gave Connie Chang in amount of total USD $168,000 in cash respectively for the personal loan as second mortgage loan on Stephen Law's real property.

I have no any of personal knowledge regarding Stephen Law's lawsuits in the U.S. at the time of I lent him the loan of USD $168,000.

I declare under a penalty of perjury of the laws of the United States that above statements and the forgoing is true and correct, and this declaration executed on the 5th of September 2007 in City of Guangzhou, China.

/s/_____
Lili Lin
Defendant pro se

Appendix R

DECLARATION OF CONNIE CHANG (SEPT. 2007)

DECLARATION OF CONNIE CHANG

I, Connie Chang, declare as follows:

I am over the age of 18 years and am not the party in the instant case of LA04-l0052-TD and the adversary proceeding cases of 07-01102-TD, 04-1969-TD and the State Court LASC case number KC048398, I have personal knowledge of the facts set forth below and could and would testify competently thereto if called upon to do so.

Lili Lin of China and I are school-classmate since 1962.

On or about November 1968, Lili Lin, I and Stephen Law (aka Zhanjun Luo) and many of our school classmate were sent to a County of Dongguan in the People's Republic of China by the Chinese government, and working, studying and living together in the village of countryside until about 1974, we have been school mate and best friend since 1962. I have more than five school mates in the United States can testify that Lili Lin and Stephen Law and me are closed friends since 1968 and I do have many of the pictures to show that we were working, studying in county of Dongguan in 1968.

On or about February and March of 1998, Lili Lin and Stephen Law both told me that Stephen Law borrow USD $168,000 from Lili Lin for the personal loan as second

mortgage loan on Stephen Law's real property located at 16150 LaMonde Street, Hacienda Heights, California, and I received $168,000 in cash from Lili Lin on behalf of Stephen Law. Because in China, people could not wire the money to the United States, therefore, Stephen Law's friend Mr. Zhang, Li took the money and wired USD$50,000 and USD$63,000 on February and March 1998 to Stephen Laws bank account of U.S. respectively from Hong Kong, and the rest of $55,000 gave to Stephen Law's sister for the loan monthly payments pay to Lili Lin as Stephen Laws direction.

I do not have personal knowledge regarding the Lili Lin's Note and Trust Deed would sold to me, and I have not buy any of Note or Trust Deed from Lili Lin of Artesia. I have never requested the "County Records Research Inc." to send any documents to Lili Lin of Artesia in any time in any place.

On August 1, 2007, about 10:30 A.M., I was in the Bankruptcy Court; room 1345 as witness ready to testify but the Judge Donovan refused let me testify as well as trustee's attorney Robyn Sokol.

I declare under a penalty of perjury of the laws of the United States that above statements and the forgoing is true and correct, and this declaration executed on the 5th of September 2007 in City of Alhambra, California.

/s/_____
Connie Chang
Witness

Appendix R

DECLARATION OF YINGYING LUO (SEPT. 2007)

DECLARATION OF YINGYING LUO

I, Yingying Luo, declare as follows:

I am over the age of 18 years and am not the party in the instant case of LA04-10052-TD and the adversary proceeding cases of 07-01102-TD, 04-01969-TD and the State Court case LASC case number KC048398, I have personal knowledge of the facts set forth below and could and would testify competently thereto if called upon to do so.

On or about February and March 1998, by Stephen Law's requests, I delivered about UDS$50,000 and USD$63,000 to Stephen Law's friend Mr. Zhang, Li respectively in city of Guangzhou, China, and Mr. Zhang, Li told me that he wired the said money to Stephen Law's bank account in the U. S. because in China, people could not wire the money to the United States.

I declare under a penalty of perjury of the laws of the United States that above statements and the forgoing is true and correct, and this declaration executed on the 5th of September 2007 in City of Rowland Heights, California.

/s/_____
Yingying Luo
Witness

Appendix R

EXHIBIT B: SUBPOENA AND RECORDS FROM COUNTY RECORDS RESEARCH INC.

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

Case No. LA 04-10052TD

Chapter 7

Adv. 07-01102 TD

NOTICE OF SUBPOENA AND REQUEST FOR A COPY OF DOCUMENTS BY CHAPTER 7 TRUSTEE ALFRED H. SIEGEL PURSUANT TO FED. R. BANKR. P. 9016

Date: April 20, 2007
Time: 10:00 am
Place: PO Box 2333
Chino, CA91708-2333

Re: Stephen Law, an individual,

Debtor,

Appendix R

Alfred Siegel, Chapter 7 Trustee

Plaintiff,

vs.

Lili Lin, an individual,

Defendant.

To the Honorable Thomas Donovan, Judge of the United States bankruptcy Court and Trustee Alfred H. Siegel and all other interested parties and their attorneys of record:

PLEASE TAKE NOTICE that Stephen Law, debtor will serve County Records Research, Inc. a California Corporation, with the subpoena in an Adversary Proceeding request for a copy of documents by Chapter 7 Trustee Alfred H. Siegel be delivery to Debtor Stephen Law, P.O. Box 2333, Chino, CA 91708-2333 on or before April 20, 2007, 10:00 am pursuant to the Federal Rules of Bankruptcy procedure 9016 and Fed. R. Civ.P. 45.

Dated: April 5, 2007

/s/_____

Stephen Law
Debtor Pro se

Appendix R

Stephen Jones
Box 2333
Chino, Ca. 91708-2333

/

CountyRecordsResearch.Com
HUNTINGTON MARINA EXECUTIVE CENTER
4952 WARNER AVENUE. SUITE 105
HUNTINGTON BEACH. CALIFORNIA 92649

Appendix R

Ainat

CRO - 1030

Represent Chapter 7 Trustee

Ainat

John 818 501-3618

DATE: 4/29 10:47am

Kiene Pitch/// Questions/// Returned Call

From: Ainat

Number: 818 464-3112

Appendix R

HUNTINGTON MARINA EXECUTIVE CENTER
4952 WARNER, SUITE 105
HUNTINGTON BEACH, CALIFORNIA 92649
(714) 846-6634 FAX (714) 846-8720

DATE: 5-2-05

TO: Ainat Kiewe

TELEFAX NUMBER: 818-501-3618

FROM: John Holmberg

MESSAGE:

THE TOTAL NUMBER OF PAGES, INCLUDING THIS COVER SHEET, ARE 2

Appendix R

TS # CRO-1030 TSG & TITLE ST
SOURCE AWARD

BENEFICIARY INFORMATION:
Lili Lin
Box 770
Artesia, Ca 90702

PHONE # 626-869-6852 No good

TRUSTOR INFO: SOCIAL SECURITY #
Zhanjun Luo

DEFAULT PRINCIPAL: $167,890.00

PROPERTY ADDRESS:
8205 - 012 - 009
16150 La Monde St
Hacienda Heights, Ca. 91745

DATE OF DEFAULT: 12-24-1999

NOTE DATE: 6-24-99 NOTE AMT: 168,000

INT. RATE: 10%

COMPOUNDED: Y

PAYMENT AMT: 1,622.00

FINAL PAYMENT DATE: 6-24-2019

Appendix R

PAY PERIOD: Monthly

BREACH: missed payments INTEREST and/or PRINCIPAL PAYMENT

ASSIGNMENT: N MODIFICATION: N SUBST: Y

OWNER OCCU: Y

OTHER COSTS INCURRED:

Default principal calculated by John for payments July thru November.
[ILLEGIBLE]

Appendix R

Lili Lin
P.O. Box 770
Artesia, CA 90702
February 10, 2000
562-926-6928
2/15/00

Mr. David Giron
County Records Research
Huntington Marina Executive Center
4952 Warner Ave. #105
Huntington Beach, CA 92649

Re: Foreclosure of property located in L.A. County
APN 8205-012-009

Dear Mr. Giron:

Please send me all the documents regarding the foreclosure and the papers that are need me to sign.

Thank you for your attention on this matter.

Sincerely,

Lili Lin

Appendix R

COUNTY RECORDS RESEARCH
HUNTINGTON MARINA EXECUTIVE CENTER
4952 WARNER AVENUE, SUITE 105
HUNTINGTON BEACH, CALIFORNIA 92649
(800) 664-2567 FAX (714) 846-8720

3-23-2000

Dear Lili Lin:

We sent you documents to sign so that we can begin foreclosure proceedings one month ago. As of today we have not received the documents and the phone number we have for you is incorrect. Please call us at 800-664-2567 so that we can proceed with the foreclosure.

John Holmberg

Appendix R

COUNTY RECORDS RESEARCH
HUNTINGTON MARINA EXECUTIVE CENTER
4952 WARNER AVENUE, SUITE 105
HUNTINGTON BEACH, CALIFORNIA 92649
(800) 664-2567 FAX (714) 846-8720

Dear Lili Lin:

In regards to starting a foreclosure on the property know as APN 8205-012-009. We need you to give us a call as we have a few questions to ask before we can send you the documents to sign.

John Holmberg

Appendix R

SEE SUPPLEMENTAL APPENDIX

PAGES 34a - 41a

FOR

EXHIBIT B: SUBPOENA AND RECORDS FROM COUNTY RECORDS RESEARCH INC.

APPENDIX S — SELECT EXHIBIT TO TRUSTEE'S REPLY SUPPORTING FIRST INTERIM APPLICATION FOR COMPENSATION

EXHIBIT 8: LI V. LAW, ORDER OF OCT. 14, 1999

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CASE NO. KC025668

CAU-MIN LI,

Plaintiff,

vs.

ZHANJUN LUO a.k.a. STEPHEN LAW,

Defendant

Good cause appearing therefore, the Honorable William J. McVittie, Judge of the Superior Court orders that the Arbitration Award executed by Jules Barnett, Judge Refired, Arbitrator, on July 8, 1999, be entered as a Judgment.

Said Judgment shall be in favor of the plaintiff, Cau-Min Li, and against the defendant, Zhanjun Luo a.k.a. Stephen Law, as follows:

The arbitration fee in the amount of $455.00, shall be paid one-half by plaintiff, and one-half by defendant.

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Defendant shall forthwith pay to plaintiff the following sums:

Previously awarded sanctions	$ 3,685.50
Superior Court costs	1,587.12
Court of Appeal costs	146.62
U.S. Bankruptcy Court costs	120.00
TOTAL	$ 5,539.24

As further judgment, defendant shall pay to plaintiff the sum of $35,000.00 damages. In the event the judgment is not paid within six (6) months from July 8, 1999, or arrangement for payment are not made by a written stipulation between the parties, the entire amount payed for by plaintiff in the amount of $131,821.74, shall be the judgment against the defendant.

The Court further finds that the defendant's acts and conduct merit reaffirmation as a vexatious litigant, from August 25, 1995, as of July 8, 1999.

DATED OCT. 14, 1999

/s/_____
WILLIAM J. MCVITTIE
JUDGE OF THE SUPERIOR COURT

APPENDIX T — SELECT EXHIBITS TO MOTION TO SURCHARGE

EXHIBIT 31: SMYTH'S DECLARATION SUPPORTING HIS OPPOSITION TO TRUSTEE'S MOTION FOR SANCTIONS (JUNE 2007), EXHIBIT A, AND EXHIBIT D

DECLARATION OF ANDREW E. SMYTH

STATE OF CALIFORNIA

ss

COUNTY OF LOS ANGELES

I, Andrew E. Smyth, declare the following to be true and correct under penalty of perjury.

1. I am an attorney licensed to practice law in the state of California.

2. I am the Attorney for Lili Lin of China.

3. I have never received the Trustee's Motion for Sanctions – I found it on PACER.

4. At the time I was hired for this case I was told by Stephen Law that Lili Lin was hiring me. Lili Lin has stated that Connie Chang gave my office the money for my fee. I did not see anything wrong if Mr. Law or a friend of his hired me on behalf of Lili Lin of China.

5. I knew that the Trustee believed that no one named Lili Lin of China existed. At the time I decided to represent Ms. Lin I asked a Chinese friend to look at the documents filed in the case. This person told me that the documents looked authentic. When the Court asked me if I represented Lili Lin of China I did not want to give the impression that I had met her because of the trustees allegations. If the trustee won the case based on a finding of this court that Lili Lin of China did not exist the trustee would then state that I had told the court she did exist. I felt at the time I filed the answer that it was clear that there was a person in China named Lili Lin who was in correspondence with Mr. Law.

6. Recently I have been in email contact with Ms. Lin and this has convinced me the there is a "Lili Lin of China" and that the email messages I have received originated in a time zone 9 hours different than Pacific Standard time. I have attached a copy of such emails with its "details" or internet path printed out.

7. I filed the motion for judgment on the pleadings because I believed that the trustee had filed the present suit after the statute of limits. After having filed this I received a written motion for sanctions (which differs from the filed motion for sanctions) and a telephone demand from the trustee's attorney that I withdraw the motion. The trustee's attorney told me that the motion was frivolous because, first, the Bankruptcy Court had found there had been no fraudulent transfer. And second, the trustee's attorney stated that the Trustee's position had always been that Lili Lin of China was a party to the 2004

suit and that that suit was still pending against her. When I looked at the pleadings on the internet I saw that neither of these statements were accurate. The Bankruptcy Court had entered a judgment based on a stipulation that the transfer was fraudulent. Further, the Trustee's position in that suit was that there was only one "Lili Lin" and that was Lili Lin of Artesia.

8. I also saw by examining the prior suit that the essence of the complaint concerning the trust deed was that it was a fraudulent transfer. I also spoke to one attorney who was involved with the trustee who said that the trustee was going to make an argument re equitable tolling concerning the statute of limits. So I knew that the trustee was concerned he had missed the statute of limits, and that this was a legitimate issue in this case. I felt that the threat of sanctions was not because this was a frivolous issue---but was because it was a very arguable issue which the trustee was afraid might prevail. For this reason I felt the threat of sanctions under 9011 was ~~not~~ made in bad faith and was meant to coerce me to not present a good defense for Lili Lin in the present case.

9. If called upon to testify as to the foregoing, I could and would so competently do so.

Executed this 11 of June, 2007 at Los Angeles, CA 90010

/s/_____
ANDREW E. SMYTH
Declarant

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EXHIBIT A TO SMYTH'S DECLARATION SUPPORTING HIS OPPOSITION TO TRUSTEE'S MOTION FOR SANCTIONS

[LETTERHEAD OF EZRA BRUTZKUS GUBNER LLP]

April 25, 2007

VIA OVERNIGHT MAIL

Andrew Smyth, Esq.
Smyth Law Office
4929 Wilshire Blvd., Suite 988
Los Angeles, CA 90019

Re: Our File No. 644.04
In re: Stephen Law, Debtor.
Case No. LA04-10052-TD.

Dear Mr. Smyth:

We are in receipt of your Motion for Judgment on the Pleadings ("Motion"). Pursuant to Federal Rules of Bankruptcy Procedure 9011 and Local Bankruptcy Rule 9011-1 and for the reasons set forth in the enclosed Motion for Sanctions Arising from Lili Lin's Motion for Judgment on the Pleadings and Answer Filed Allegedly on Behalf of Lili Lin of China, we request that you withdraw the Motion forthwith. To the extent the Motion is not withdrawn, the Trustee intends to file a timely opposition to the Motion as well as the Motion for Sanctions at the appropriate time.

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Additionally, as set forth in the Motion for Sanctions, the Trustee requests that the Answer be withdrawn. Based upon your statements to the Bankruptcy Court at the status conference on the above captioned matter that Lili Lin of China has not employed you to represent her, you have never spoken to Lili Lin of China and the Debtor is the party that employed you to represent Lili Lin of China as well as the statements in the Answer that you are counsel for the Debtor, the Answer to the Complaint for Declaratory Relief should be withdrawn as well. If you have any questions or concerns please do not hesitate to contact me.

If you require additional time to review the Motion for Sanctions and analyze the Trustee's position, the Trustee will agree to execute a stipulation (prepared by you) which will provide for a continued hearing date on the Motion. This will alleviate the need for the Trustee to expend unnecessary legal resources and time responding to the Motion while you determine whether to proceed with the meritless Motion.

Sincerely,

/s/_____
Robyn B. Sokol

RBS:nf
Enclosure
cc: Talin Keshishian, Esq. (i/o)

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SEE SUPPLEMENTAL APPENDIX

PAGES 42a - 45a

FOR

EXHIBIT 31: EXHIBIT D TO SMYTH'S DECLARATION SUPPORTING HIS OPPOSITION TO TRUSTEE'S MOTION FOR SANCTIONS

Appendix T

EXHIBIT 32: LAW'S DECLARATION (JUNE 2007) AND OBJECTIONS TO TRUSTEE'S MOTION FOR SANCTIONS IN DECLARATORY RELIEF ACTION AND EXHIBIT

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA,
LOS ANGELES DIVISION

Case No. LA04-10052TD

Chapter 7

Adv. No. 07-01102 TD

WITNESS STEPHEN LAW'S DECLARATION AND OBJECTIONS TO TRUSTEE'S MOTION FOR SANCTIONS ARISING FROM LILI LIN'S MOTION FOR JUDGMENT ON PLEADINGS AND LIN'S ANSWER
[Loca. Bankr.R. 9013-1(a)(7)]

Date: June 27, 2007

Time: 10:30 am

Place: Courtroom 1345

Re: Stephen Law, an individual,

Debtor,

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Alfred Siegel, Chapter 7 Trustee

Plaintiff,

vs.

Lili Lin, an individual,

Defendant.

To the Honorable Thomas Donovan, Judge of the United States bankruptcy Court and Defendant Lin and Trustee Alfred H. Siegel and their attorneys of record:

Witness/Debtor Stephen Law, ("Witness Law") file his declaration and objection to Trustee's motion for sanctions arising from Lili Lin's motion for judgment on the Pleading and answer filed allegedly on behalf of Lili Lin of China based on the grounds that the defendant Lin's Motion for judgment on the Pleading was filed in merit and answer was filed on behalf of Lili Lin of China, therefore, it were filed in good faith, sanctions are not warrant. Furthermore, trustee's motion contained many of false statements which shall not be considered by the court. Witness Law was in the court hearing of May 30, 2007, and willing to testify in the court.

Dated: June 12, 2007

/s/_____
Stephen Law
Witness/Debtor pro se

Appendix T

DECLARATION OF STEPHEN LAW

I, Stephen Law, aka Zhanjun Luo, declare as follows:

I am the witness in the adversary proceeding action of 07-01102TD and the Debtor in the bankruptcy cases and I have personal knowledge of the facts set forth below and could and would testify competently thereto if called upon to do so.

A. *DEFENDANT LIN'S MOTION FOR JUDGMENT WAS FILED IN MERIT*

Trustee alleged in his motion for sanctions that the court denied the motion based on the grounds that the Defendant Lin's motion is filed in bad faith and filed solely to harass the trustee. The entire premise of the Motion for Judgment was that the Declaratory Relief Complaint was nothing more than a disguised action to avoid a fraudulent transfer. As explained numerous times to Smyth, the Trustee need not include such claims in the Declaratory Relief Complaint as such claims are currently pending before this Court in Adversary Proceeding No. 04-01969 ("Avoidance Action"). See Trustee's Sanction Motion on page 4, line 4 to 13. **This is simply not true and is incorrect.**

On May 30, 2007, I was in the court room as witness for defendant Lin's motion for judgment on Pleading. The court denied the motion based on the ground that the court was confused which motion is based, whatever the motion for Judgment on Pleadings or Summary

Judgment? Because the motion first using the FRCP 56 as for Summary Judgment, and later quote FRCP 12 for Judgment on Pleadings.

The status of limitations on trustee's Declaratory Relief is arguable. Because the declaratory action is filed after seven years seven months after the Lin's transfer was made on June 24, 1999, and based on the California Civil Code 3439.09 maxima seven years to file an action and 11 USC section 548, 546, trustee has one year to file the adversary proceeding of declaratory relief. Therefore, the court had not ruled on this issue yet.

In addition, the court stated on the hearing of May 30, 2007 on defendant Lin's motion that the 2004 Avoidance action was final in the bankruptcy court. The court is correct.

Furthermore, trustee alleged in his instant motion based on "*Smyth declared on the record in open court that he never met, spoken with nor received any communication whatsoever from Lili authorizing him to appear on her behalf.*" See motion on page 11, line 26-28. **This is also simply not true and is false.**

Pursuant to the transcription of April 19, 2007, Witness Law could not found that Mr. Smyth state in the court that **he never received any communication whatsoever from Lili authorizing him to appear on her behalf.**

Appendix T

Witness Law has information and believer that trustee's allegations are large false and for the purpose of misleading the court.

The trustee's new attorney Robyn B. Sokol just start to handled trustee's cases, and may not fully understand the whole story, but the exhibits trustee submitted on the Motion to Consolidating adversary proceedings clear show that the old 2004 case No. 04-01969 final judgment (Stipulation Judgment) was entered on May 18, 2005. See Consolidated Motion Exhibit "1" page 15.

Therefore, defendant Lin's motion for judgment on Pleadings was filed in merit, although the trustee has argument, but it is not filed in bad faith.

B. *TRUSTEE ACCUSED WITNESS/DEBTOR LAW WITHOUT EVIDENCES*

Trustee in his motion to accuse Debtor and witness Law who hired Andrew Smyth for defendant Lin is absolutely untruth. Witness Law is only interpreter for defendant Lin's some of Chinese email and fax, because this job, Mr. Smyth was made minor mistake or negligence. Everyone would make mistake, even some judges of the courts. As matter of fact, trustee's attorney did made mistake such as trustee's attached draft Motion for sanction on the first page indicating that she is "Attorney for Plaintiff, **Rosendo Gonzalez**, Chapter 7 Trustee". If Mr. Smyth should be sanctioned for such minor mistake, the trustee should be sanctioned too.

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I, Stephen Law have never hired Andrew E. Smyth to be my attorney or anyone else. I did some of documents and emails for translation works on behalf of Lili Lin of China.

Witness Stephen Law is interpreter for some of emails and of documents of Lin of China on behalf of Lin of China, attached marked as **Exhibit A** is some of the email from Lin of China, and I have translated it to English. Although the personal letters are privacy of person, but for the good faith to show that Mr. Smyth did communicating with Lin of China and Witness Law is interpreter.

In addition, because of Mr. Smyth may have more than couple hundred cases a years for representing hundreds of the clients, therefore, Witness Law has information and believer that Mr. Smyth just made minor mistake in the court of April 19, 2007.

There were also some of confusions in the hearing of April 19, 2007, such as Judge Donovan said that Smyth mentioned about Judge Rafitti earlier, but Mr. Smyth said he did not as the trustee's attorney Ms. Kiewe stated that No, I am unaware of anything in front of him, the Judge Donovan replied that Okay, I misunderstood. See Motion for sanctions on Exhibit 3, page 34, line 21.

Trustee also has accusing debtor Law that in his complaint for declaratory relief that debtor has directed the "County Records Research Inc." to assign Lin of Artesia's interest in the Note to Connie Chang and foreclose on the property and sell the property to satisfy the obligations. **This is also absolutely false.** Trustee's

motion also contained most the augments to re re-alleged BAP's judgments of December 29, 2007 trustee's allegation is barred re jusdciate.

Debtor need not to repeat re-objecting to trustee's meritless allegation, but must point out that trustee's conclusion for lack of evidence presented by trustee is untruth, Witness Law oppose trustee's allegations on the following grounds:

(1) As the declarations of Lili Lin of China shown, Lin of China has no any knowledge re Debtor's lawsuit in the United States, including Cau-Min Li's state court action, and Debtor has not notified Lin of China until filing the bankruptcy petition. Because Debtor's prior bankruptcy of 1995 and because my credit rating, I could not get any loan in the States. So that I decided to get personal loan from friends.

(2) Lili Lin of China was both beneficiary and trustee because the loan was personal loan, trustee has no such question to Lin of Artesia when he received the Note and DOT, because trustee alleged that the Trust Deed and the Note were fraudulent and void because of no consideration was gave and then after obtaining the ownership of the same Trust Deed then alleged that it is real and legitimate preserved for the benefit of the Estate, in fact, that is only for their benefits.

(3) Trustee alleged that Lin of China never filed a proof of claim. Pursuant to the bankruptcy

Codes, secured creditor does not need to file proof of claim, Debtor has information and believer trustee knew the rules but he is attempt to misleading the Court.

(4) As the declaration of Lin of China shown, Lin of China owned 100% shares of Lin's Mortgage & Associates, but Lin of Artesia does not. Lin of Artesia is not the beneficiary of Note & DOT.

(5) Debtor's Schedule J of petition clear shown his monthly mortgage payments to Washington Mutual Bank and Lin's loan totally in amount of $2,731.00. Obviously, trustee knew that debtor's bankruptcy petition of statement of Financial Affairs he made no payment to loan of bank or creditor within 90 days immediately preceding commencement of the bankruptcy case merely very small mistake. Anyone can amend the Schedules.

(6) Where the mailing address of litigants is not the relevant in any lawsuit. Only for the convenient of Lin of China, Debtor, trustee and the courts to serving and receiving the documents from opposite party. As matter of fact, the attorneys of trustee's address was 16830 Ventura Blvd. Suite 310, Encino, CA 91436, and now his new address is 21650 Oxnard Street Suite 500, Woodland hills, California, Witness Law does not believe the attorneys now living in the said address; trustee's allegation is very silly. Obviously, mailing address and residence address are totally differed.

Trustee also even provided the information from on-line search of ChoicePoint for evidences, the "evidence" shows that Debtor Stephen Law is **Female**.

Witness Law does not know how long the attorneys of trustee have been practiced law, but simply, information of On-line search cannot be using for evidence.

(7) Debtor recently served County Records Research Inc. with the subpoena in an adversary proceeding request a same copy of documents trustee requested, the subpoena documents clear show that Debtor has never contact with the County Records Research Inc, but only the Lili Lin of Artesia did in 2000, and Ainat Kiewe, a attorney of trustee, contacted with County Records Research on April 29, 2005 at 10:47a.m. and May 2, 2005, and the signature trustee claimed to be Debtor's now has been identified is by John Holmberg, a manager of County Records Research Inc. It is not by Debtor, none of documents show debtor or Connie Chang have involved with County Records Research, but only Lin of Artesia, it is apparent that Lin of Artesia was attempt to pretend to be Lin of China foreclosing the property in order to deceiving the money. Lin of Artesia is very greedy and willful and for the retaliation purpose only.

(8) Witness Law has information and believer that the letter of Lin of Artesia of November 8, 2002

is false documents, it drafted on or about April 2005 by her attorney after the fact. Witness Law has filed an action in the Superior Court of California, Los Angeles East branch of Pomona as Case No. KC048398. The State Court recently overruled defendant Lin of Artesia's demurrer on cause of actions of Interference with contractual relations and abuse of process. The State Court simply does not believe that Lin of Artesia has a copy of DOT, so that she is the beneficiary of the DOT. Witness will obtain a judgment against Lin of Artesia in the State Court sooner.

(9) Lin of China's statements of bank of China and Debtor's California Federal Bank statements, Lin of China's Note clear show her birthday is November 22, 1947, Lin of China's ID card issued by Chinese Government, and the Receipt for House payments from January 2003 to December 2003 all are evidences. Trustee has opened his eyes on the evidences but talk nonsense. His purpose is to misleading the court. In addition, these evidences are more than seven years ago, none of defendants could provided the evidences more than seven years ago.

On December 29, 2006, the Bankruptcy Appellate Panel filed a Memorandum of Decision stated that the judgment is affirmed. *However, because Lili Lin of China's status as lien holder was not conclusively determined by the compromise order, if the trustee continues to contest the lien status of Lili Lin of China, it is incumbent upon the trustee to obtain an appropriate*

judicial determination eliminating her interest for purposes of this appeal and for the sake of completeness, we assume, without deciding, that Lili Lin of China has standing to appeal because of the risk that the trustee will attempt to dissipate the sale proceeds without having first obtained a judicial determination establishing Lili Lin of China's lien status in those proceeds. It is plain that Lili Lin of China remains entitled to assert her claim to the 1999 Note and DOT. ***If the trustee continues*** *to contest the lien status of Lili of China, it is incumbent upon the trustee to obtain an appropriate judicial determination eliminating her interest. We will leave the precise procedure to discretion of the bankruptcy court,* ***subject to applicable rules of procedure and principles of due process.*** (See exhibit 3 of the motion, page 34, footer note)

Obviously, the Panel does not require trustee must file an adversary proceeding but if the trustee want to continue contest the lien of Lin of China under applicable rules of procedure and principles of due process to obtain an appropriate judicial determination.

Obviously, trustee has not complied with the BAP order to file an action under applicable rules of procedure and principles of due process. It is apparent that trustee is abused of legal proceed.

As matter of facts, Witness Law believes that the SAP's Judgments are inclined trustee, debtor and Lin of China to make settlement without continue to fight, therefore, debtor did wrote a letter to trustee on November 9, 2006 and email to trustee's attorney requested to reconsider the settlement offer on May 21,

2007, unfortunately, trustee decided to file the frivolous action and also file two appeals to the Court of Appeal attempt to vacate the judgments of BAP.

Furthermore, on April 20, 2005, the when the court ordered denying debtor's motion to compel trustee's responses and granting Trustee's motion to compel debtor's responses, and then sanctioned Debtor in amount of $3,520. In the instant motion, trustee claims that he spent 68 hours for two motions and claiming $22,160.50 for his attorney's fees which is undeliverable and is more than overbill.

According to the Proof of Service of trustee's motion, trustee served Lin's attorney Mr. Smyth to the wrong address, pursuant to the Fed. R. Bankr. P. the proof of Service is invalided.

Based on the forgoing, the Witness Stephen Law respectfully requests that trustee's motion be denied, because defendant Lin's motion is filed in merit, not in bad faith, and trustee's reason for sanctions based on the old adversary proceeding 04-01969 is still pending in this court is incorrect.

I declare under a penalty of perjury under the laws of the United States that the forgoing is true and correct, and this declaration is executed on the 12th of June 2007, City of Industry, California.

/s/_____
Stephen Law
Witness and Debtor pro se

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SEE SUPPLEMENTAL APPENDIX

PAGES 46a - 48a

FOR

EXHIBIT 32: EXHIBIT TO LAW'S DECLARATION AND OBJECTIONS TO TRUSTEE'S MOTION FOR SANCTIONS IN DECLARATORY RELIEF ACTION

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EXHIBIT 34: LAW'S AND LIN OF CHINA'S RESPONSE TO THE BAP ORDER TO SHOW CAUSE

UNITED STATES BANKRUPTCY
APPELLATE PANEL
OF THE NINTH CIRCUIT

BAP No. CC-07-1323
BK. No. LA04-10052-TD
Adv. No. LA07-011102-TD

RESPONSE TO CLERK'S ORDER OF OCTOBER 4, 2007

Re: Stephen Law, an individual,

Debtor,

Lili Lin; Stephen Law,

Appellants,

vs.

Alfred H. Siegel. Chapter 7 Trustee,

Appellee

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To the United States Bankruptcy Appellate Panel of ninth Circuit and Appellee Alfred Siegel, chapter 7 trustee:

This is Appellants' Response to Clerk's order of October 4, 2007.

1) The bankruptcy's order strike appellant's answer is not a final, but the court set a hearing on October 18, 2007 that to strike Appellant's second answer of September 27, 2007 and motion of trustee for default judgment, (See attached Exhibit A as the court OSC and trustee's notice of motion) if the motion granted, the order will be the final judgment, appellant will amend the Notice of Appeal.

2) Appellants have no intension to moving for leave to appeal because the court was previously set the trustee's motion of default to December 6, 2007. (See Exhibit B) but after trustee's attorney Ms. Robyn Sokol discussed with Judge Donovan without appellants' present on September 7, 2007 then changed the hearing on October 18, 2007. (See attached Declaration of Stephen Law) In ....

* * * *

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DECLARATION OF STEPHEN LAW

I, Stephen Law, aka Zhanjun Luo, declare as follows:

I am the debtor in the bankruptcy case 04-10052-TD, and the witness in the adversary proceeding action of 07-01102-TD, and I have personal knowledge of the facts set forth below and could and would testify competently thereto if called upon to do so.

On or about September 7, 2007, office of trustee's attorney called that the court would like me come to the hearing of my motion for reconsideration for order to pay cost on appeal on September 12, 2007, even thought, the court noted that the motion was withdraw but want to talk me about Lili Lin's case for status conference.

On September 12, 2007, I went to the court which ordered that the hearing of motion for entry of default judgment set on December 6, 2007, but did not grant trustee's entry of default.

On September 27, 2007, I called trustee's attorney Robyn Sokol after I received trustee's proposal order for granting trustee's request for entry of default against Lili Lin and Setting hearing on trustee's Motion for default judgment, because I believe that the court did not grant the request for entry of default, Ms. Sokol insisted that the court has granted the request for entry of default but she told me that she called Judge Donovan who did not want to sign the order but set the motion and OSC on October 18, 2007, I asked Ms. Sokol what is OSC, she just laugh

but did not tell me. Later on, I received the transcript of September 12, 2007 which confirmed that the court did not grant trustee's request for entry of default but set the hearing of motion for entry of default on December 6, 2007.

On October 3, 2007, I called judge Donovan's Office and would like talk to the Judge Donovan but the Law Clerk Kevin Morse who told me that Judge Donovan did talk with trustee's attorney Robyn Sokol to discussed the procedure of the case and changed the hearing date of motion for default from December 6, 2008 to October 18, 2007 and also set the OSC on October 18, 2007, he also told me that Judge Donovan cannot talk with me but would like me come to the court on October 18, 2007.

On October 4, 2007, I wrote a letter to trustee's attorney Ms. Sokol to confirm the telephone conversation of September 27, 2007 and the date of October 18, 2007 for motion of default. (Exhibit A)

On October 4, 2007, I also wrote a letter to the Law Clerk of Judge Donovan Kevin Morse that to confirm the date of October 18, 2007 for motion of default. (Exhibit B)

On October 5, 2007, the United States Bankruptcy Appellate Panel issued a Memorandum of decision that REVERSE and REMAND the bankruptcy court's order denying Stephen Law's motion for an Order directing trustee to pay debtor's claimed homestead exemption of $75,000.

* * *

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. . . addition, Appellant Lili Lin will meet her former attorney Peter C. Chow on December 29, 2007, for representing Appellant to the court, (See attached Declaration of Lili Lin)

3) Therefore, appellants respectfully request the BAP to construct the appeal that to extend the filing the opening brief to February 2008, or at that time, appellant' may dismiss the appeal by themselves if the court deny trustee's default motion and continues the trial to February 2008.

Dated: October 16, 2007

/s/_____

Stephen Law Lili Lin
Appellants pro se

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DECLARATION OF LILI LIN

I, Lili Lin, declare as follows:

I am a creditor in the bankruptcy court case of LA04-10052-TD and the defendant in adversary proceeding cases of 07-01102-TD and 04-01969TD, I have personal knowledge of the facts set forth below and could and would testify competently thereto if called upon to do so.

On or about November 1968, Connie Chang, Stephen Law (aka Zhanjun Luo) and I and many of our school classmate were sent to a County of Dongguan in the People's Republic of China by the Chinese government, and working, studying and living together in the village of countryside until about 1974, we have been school mate and best friend until present.

On or about February and March of 1998, I and Stephen Law both told Connie Chang that Stephen Law borrow USD $168,000 from me for the personal loan as second mortgage loan on Stephen Law's real property located at 16150 La Monde Street, Hacienda Heights, California, and on or about February and March 1998, I gave Connie Chang in amount of total USD $168,000 in cash respectively for the personal loan as second mortgage loan on Stephen Law's real property. I have no any of personal knowledge regarding Stephen Law's lawsuits in the U.S. at the time of I lent him the loan.

Because my sister has applied a immigration visa for me for immigrant to the U.S., pursuant to the rules of

the immigration of Homeland security Department, who applied a immigration visa for immigrant cannot get a visitor visa to the U.S., therefore, I did made personal interview appointment with my former attorney Peter C. Chow on or about December 29, 2007 at 10:00 a.m. in City of Hong Kong in Royal Plaza Hotel which located at 193 Prince Edward Road, West Mongkok, 610012HK, Hong Kong. Mr. Peter C. Chow will represent me to the court after the interview and he will bring all the information regarding Deed of Trust and Note back to the U.S.

Mr. Peter C. Chow can be reached at his Law Offices at 714-521-1437, located at 5681 Beach Blvd. Suite 201, Buena Park, CA 90621.

I declare under a penalty of perjury of the laws of the United States that above statements and the forgoing is true and correct, and this declaration executed on the 10th of October 2007 in City of Guangzhou, China.

/s/_____
Lili Lin
Defendant pro se

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On or about October 8, 2007, at about 6:30 P.M., I received a message from trustee's lead attorney Steven Gubner who want to discus the settlement with me regarding all the cases including Lili Lin of China's trust deed and Note, the message last about two minutes.

On or about October 8, 2007, I called Mr. Gubner who's assistant Jennifer Long told me that Mr. Gubner was on conference calls and will call me back. On the same day at night, I received Mr. Gubner's message asking me to return his call.

On October 10, 2007, I called Mr. Gubner who gone for the day because family emergency, and I talk Jennifer Long who set the time on October 11, 2007 at 11:00am to discuss the settlement without missing both parties' calls.

I declare under a penalty of perjury under the laws of the United States that the forgoing is true and correct, and this declaration is executed on the 10th of October 2007, City of Industry, California.

/s/_____
Stephen Law
Witness and Debtor pro se

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EXHIBIT 36: LIN OF CHINA'S RESPONSES TO TRUSTEE'S INTERROGATORIES IN DECLARATORY RELIEF ACTION

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

BK LA04-10052TD

CHAPTER 7

Adv. No.: AD07-01102TD

DEFENDANT'S RESPONSES TO PLAINTIFF'S INTERROGATORIES

SET No.: ONE

Re: STEPHEN LAW, an individual,

Debtor(s).

ALFRED H. SIEGEL, Chapter 7 Trustee,

Plaintiff,

v.

LILI LIN, an individual,

Defendant.

Appendix T

Defendant Lili Lin ("Defendant") hereby responds to the Interrogatories of plaintiff, Alfred H. Siegel, Chapter 7 trustee, ("Plaintiff").

PRELIMINARY STATEMENT

Defendant has attempted in good faith to respond to the interrogatories as fully and completely as possible at this stage of discovery based on the information currently available to it. Defendant continues to investigate this case and has not completed its preparation for trial. Defendant therefore submits the following responses based upon its investigation to date and without prejudice to its right to produce additional documentary and testimonial evidence.

RESERVATION OF REGHTS

These responses are made solely for the purpose of this litigation. Each response is subject to all objections as to competence, relevance, materiality, propriety, admissibility and any and all other objections and grounds which would require the exclusion of any statement herein if the requests were asked of, or any statement contained herein were made by, a witness present and testifying in Court, all of which objections and ground served and may be interposed at the time of trial. Defendant specifically reserves the right to supplement and/or amend these responses to the extent that additional information may be revealed through subsequent investigation and discovery.

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RESPONSES TO INTERROGATORIES

Without waiving the foregoing, defendant responds to the interrogatories as follows:

Interrogatory No. 1

State the name, address and telephone number of each and every witness with personal knowledge who can testify in support of the facts and contentions contained in Your Answer.

Response to Interrogatory No. 1

Stephen Law
PO Box 93562
City of Industry, CA 91715

Peter C. Chow Esq.
5681 Beach Blvd. Ste. 201
Buena Park, CA 90621

Andrew E. Smyth Esq.
4929 Wilshire Blvd. Ste. 605
Los Angeles, CA 90010

Lili Lin
17827 Powell Place
Artesia, CA 90701

Alfred H. Siegel
15233 Venture Blvd. Ninth Floor
Sherman Oak, CA 91403

Appendix T

Interrogatory No. 2

State the name, address and telephone number of each and every witness with personal knowledge who can testify in support of the facts and contentions contained in Your responses to these Interrogatories.

Response to Interrogatory No. 2

Same as listed on response to interrogatory No. 1.

Interrogatory No. 3

State the name, address and telephone number of each and every witness with personal knowledge who can testify in support of the facts and contentions contained in Your responses to the Request for Admission. Set No. One served concurrently herewith.

Response to Interrogatory No. 3

Same as listed on response to interrogatories No. 1.

Interrogatory No. 4

State the name, address and telephone number of each and every witness with personal knowledge who can testify in support of the facts and contentions contained in Your responses to the Request for Production of Documents, Set No. One served concurrently herewith.

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Response to Interrogatory No. 4

Same as listed on response to interrogatory No. 1.

Interrogatory No. 5

State all facts upon which the First Affirmative Defense stated in the Answer is based.

Response to Interrogatory No. 5

> *Cal. Civ. Code section 3439.09 provides that A cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought ... within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant ... within four years after the transfer was made or the obligation was incurred.*
>
> *(c) Notwithstanding any other provision of law, a cause of action with respect to a fraudulent transfer or obligation is extinguished if no action is brought or levy made within seven years after the transfer was made or the obligation was incurred.*

The real estate loan was transferred on or about June 24, 1999, plaintiff's adversary complaint was filed on or about February 8, 2007, that is about over seven (7) years and seven (7) months after the transfer was made.

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Therefore, limitation is applied to the instance case.

Interrogatory No. 6

State all facts upon which Second Affirmative Defense stated in the Answer is based.

Response to Interrogatory No. 6

> *11 U.S.C. Section 548. Fraudulent transfers and obligations (a)(1) states that:*
>
> *The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or* ***within one year before the date of the filing of the petition****, if the debtor voluntarily or involuntarily ... made such transfer ...*
>
> *11 U.S.C. Section 546 Limitations on avoiding power provides that: (a) An action or proceeding under section 544, 545, 547, 548, or 553 of this title may not be commenced after the earlier of (1) the later of (A) 2 years after the entry of the order for relief; or (B) 1 year after the appointment or election of the first trustee under section 702, 1104, 1163, 1202, or 1302 of this title if such appointment or such election occurs before the expiration of the period ...*

The transfer was made on June 24, 1999, debtor's Bankruptcy petition was filed on January 5, 2004, that was more than four years seven months after the transfer was

made, and the plaintiff's adversary complaint was filed on or about February 8, 2007, that is about over seven (7) years and seven (7) months after the transfer was made. Therefore, limitation is applied to the instance case.

Because this status of repose "provides an overarching, all-embracing maximum time period to attack a fraudulent transfer" *Macedo v. Bosio*, 104 Cal. Rptr. 2d 1, 5 n. 4 (Cal. App. 2001), it extinguished the trustee's ability to reach the transfers that occurred more than seven years prior to the date upon which the trustee filed the claim against Jenner. It is make clear that lapse of the statutory period prescribed by the section bars the right and not merely the remedy.

The present adversary complaint was filed on February 8, 2007. The transfer occurred on June 24, 1999, see plaintiff's complaint page 2, line 17. Therefore all three times limits of one year, two years, or even seven years have been passed, absolutely this cause of action is time barred.

Interrogatory No. 7

Describe why County Records and Research sent Lili Lin of Artesia and not you the documents attached hereto as Exhibit A.

Response to Interrogatory No. 7

Defendant has no personal knowledge neither County Records and Research nor Lili Lin of Artesia. It is

apparent that Lili Lin of Artesia was greedy to pretend to be the defendant to foreclose the property in order to get the money of loan of $168,000.

Interrogatory No. 8

Describe why County Records and Research tried to foreclose on the Property pursuant to the documents attached as Exhibit A.

Response to Interrogatory No. 8

Defendant has no personal knowledge neither County Records and Research nor Lili Lin of Artesia. It is apparent that Lili Lin of Artesia was greedy to pretend to be the defendant to foreclose the property in order to get the money of loan of $168,000.

Interrogatory No. 9

State Your address.

Response to Interrogatory No. 9

Defendant's mailing address in the U.S. is follow:
PO Box 93562
City of Industry, CA 91715-3562

Interrogatory No. 10

State how long You have been living at your current address.

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Response to Interrogatory No. 10

About two years.

Interrogatory No. 11

Describe Your relationship with Debtor.

Response to Interrogatory No. 11

Debtor and Defendant were sent by the Chinese government to the countryside in county of Dongguan on or about 1966, and working, living and studying together.

On or about 1998 to 1999, Debtor could not get any loan from any Bank in the States because of the first bankruptcy filing on 1995 and because Debtor's credit report rating. There was only one way to get the personal loan from outside of the States. Therefore, Debtor decided to get the personal loan of $168,000 from defendant who did not have any personal knowledge regarding any of lawsuits of Debtor, but wired the funds to debtors' California Federal Bank accounts. Debtor made regular payments to defendant.

Interrogatory No. 12

Describe Your relationship with Lin's Mortgage & Associates.

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Response to Interrogatory No. 12

Defendant owned 100% shares of the company as doing business as Lin's Mortgage & Associates.

Interrogatory No. 13

Identify each payment the Debtor made to You pursuant to the Note.

Response to Interrogatory No. 13

Debtor, his agent, representative, relative, attorneys, and anyone he authorized to pay defendant who issued the receipts as Exhibit A of plaintiff's request for admission, set one.

Interrogatory No. 14

State if You have ever lived in the United States.

Response to Interrogatory No. 14

Defendant has never lived in the United States.

Interrogatory No. 15

Explain why the Deed bears Your name as both beneficiary and trustee.

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Response to Interrogatory No. 15

Because of it was personal loan.

Interrogatory No. 16

Identify on the documents attached hereto as Exhibit B all withdrawls or payments on account of the Note.

Response to Interrogatory No. 16

Interrogatory 16 is uncertain, Defendant does not understand the meaning of "withdrawls", therefore, defendant lacked information to response to the interrogatory No. 16.

Interrogatory No. 17

Explain how withdrawls or payments identified in Your response to interrogatory number 16, and set forth in the bank statement attached hereto as Exhibit B, were made (i.e. check, wire transfer, etc.).

Response to Interrogatory No. 17

Interrogatory 17 is uncertain, Defendant does not understand the meaning of "withdrawls", therefore, defendant lacked information to response to the interrogatory No. 17.

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Interrogatory No. 18

Identify the source for the money You lent to the Debtor pursuant to the Note.

Response to Interrogatory No. 18

From the business profits and personal saving.

Interrogatory No. 19

Indentify the information the Debtor provided to obtain the loan described in the Note.

Response to Interrogatory No. 19

The Note provided Defendant's birthday which is November 22, 1947.

Interrogatory No. 20

When did the Debtor first make payments to You under the Note?

Response to Interrogatory No. 20

On or about July 1999.

Interrogatory No. 21

When was the Debtor's last payment to You under the Note.

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Response to Interrogatory No. 21

On or about September 2004.

Interrogatory No. 22

How did the Debtor make payments to You under the Note?

Response to Interrogatory No. 22

Debtor, his agent, representative, relative, attorneys, and anyone he authorized to pay defendant who issued the receipts as Exhibit A of plaintiff's request for admission, set one.

Interrogatory No. 23

Identify the bank account in which You deposited payments you receive or received from the Debtor in accordance with the Note.

Response to Interrogatory No. 23

Bank of China, account No. 4762801-0188-051248-7.

Interrogatory No. 24

As to each Document You are withholding from production that is responsive to a request in the Request for Production of Documents set No. One served concurrently herewith, identify the request by number,

identify each Document with sufficient particularity to enable the propounding party to request the production of the document pursuant to Fed. R. Civ. P. 34 or to bring a motion to compel, and state the specific grounds or privilege You assert for withholding the Document.

Response to Interrogatory No. 24

The Interrogatory No. 24 is uncertain, defendant lacked information of Fed. R. Civ. P. 34, therefore, defendant is unable to response interrogatory No. 24.

Interrogatory No. 15

Unless Your response to each request for admission set forth in the Request for Admission, Set No. One, served concurrently with these Interrogatories, is an unequivocal admission, indentify the Request for Admission by number and state each and every fact upon which You failure to unequivocally admit the request.

Response to Interrogatory No. 15

Objection. Defendant already responded to the Interrogatory 15. Therefore, plaintiff's repeat asking interrogatory 15 is for purpose of harassment.

Dated: May 14, 2007

By: /s/_____
Andrew E. Smyth
Attorney for Defendant

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF,

I have read the foregoing Defendant's Responses to Plaintiff's Interrogatories set one and know its contents.

CHECK APPLICABLE PARAGRAPH

_x_ I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Lin, Lili /s/ _____
Signature

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EXHIBIT 39: SELECT EXHIBIT TO ORDER DENYING TRUSTEE'S REQUEST FOR ENTRY OF DEFAULT JUDGMENT IN DECLARATORY RELIEF ACTION (SEPT. 2007 DECLARATION OF ROBYN B. SOKOL)

DECLARATION OF ROBYN B. SOKOL

I, Robyn B. Sokol, declare as follows:

1. I am an attorney at law and a partner with Ezra Brutzkus Gubner LLP, attorneys for Alfred H. Siegel, Chapter 7 Trustee for the Bankruptcy Estate of Stephen Law, an individual, and Plaintiff in the within adversary case (the "Trustee"). I have personal knowledge of the facts set forth below, and if called as a witness, I could and would testify competently thereto.

2. I make this declaration in support of the Trustee's motion for entry of default judgment against defendant Lili Lin, an individual (the "Defendant").

3. The Trustee filed the Complaint for Declaratory Relief (the "Complaint") in the current Adversary Proceeding (Adv. No. 07-01102) on February 8, 2007 against Lili Lin, an individual, seeking to establish that a Lili Lin "of China" never had any interest in the Debtor's residence, and that the true intended beneficiary of the alleged lien against the Debtor's residence, was in fact Lili Lin who is a resident of Artesia, California.

4. This Complaint was filed by the Trustee as a result of the Memorandum of Decision of the BAP issued with respect to Adv. No. 04-01969 pending before this Court (the "Initial Adversary Proceeding"), which provided that it was incumbent upon the Trustee to obtain an appropriate judicial determination eliminating the interest of the Lili Lin identified by the Debtor as a resident of China, in order to continue to contest the lien status of Lili Lin of China.[1]

4. On February 9, 2007 a summons on this Adversary Proceeding was issued by this Court, and on or about February 23, 2007, Andrew E. Smyth (who was counsel for the Debtor), accepted service of the summons and complaint and executed an Acknowledgment of Receipt of said summons and complaint as Defendant's attorney of record. (See Exhibit "1").

5. On March 5, 2007, Smyth filed an answer on behalf of Defendant as the "attorney for the debtors" (the "Answer").

---

1. The Trustee's complaint in the Initial Adversary Proceeding, sought avoidance of a note ("Notes") and deed of trust ("Deed of Trust") recorded on the Debtor's Residence. Lili Lin, a resident of Artesia, appeared as a named defendant and thereafter entered into a stipulated judgment with the Trustee wherein she stated that she was the same Lili Lin referred to in the Note and Deed of Trust, and that in or about 1999 the Debtor gave her a copy of the Deed of Trust and Note but never explained to her why he gave those documents to her. The Debtor filed an appeal to that Judgment (Bankruptcy Appellate Panel ("BAP") No. 05-1303), which was affirmed, and filed an appeal to the BAP ruling with the 9th Circuit Court of Appeals (No. 07-55203).

6. On June 1, 2007, the Trustee filed a Motion to Strike the Answer of Lili Lin in this Adversary Proceeding (the "Motion to Strike"), based on the fact that Smyth, as the Defendant 's alleged attorney of record, essentially stated in open court that there is no attorney-client relationship between Defendant and himself, and that he did not even know if Defendant exists.

7. For nearly four years, no evidence has been provided to the Trustee or his counsel that the purported Lili Lin of China exists and has a claim in this case, despite numerous requests for such information or evidence. Moreover, Lili Lin of China has never appeared before this Court nor made appearances at her duly noticed depositions.[2] Now her alleged attorney admits he never had any direct contact with this alleged person and doubts her existence as well.[3]

8. Based on the lack of evidence provided in opposition to the Motion to Strike, arguments raised in the Motion to Strike, the testimony provided at the hearing held on August 1, 2007, and the "Declaration of Robyn B. Sokol in Further Support of Trustee's Reply to Response to Motion to Strike the Answer of Lili Lin," the Court granted the Motion to Strike and the Order Granting Trustee's Motion to Strike was entered on August 17, 2007 (the "Order

---

2. Attached hereto as Exhibit "2" and incorporated herein by this reference is the Reporter's Certificate re Non-Appearance of Deponent.

3. (*See* Transcript of Proceedings ("Transcript"), a true and correct copy of which is attached hereto as Exhibit "4" and incorporated herein by this reference.)

Striking Answer"). A true and correct copy of the Order Striking Answer is attached hereto as Exhibit "3" and incorporated herein by this reference. The Motion to Strike sought the entry of a default. The Order Striking the Answer grants the Motion to Strike in its entirety.

9. On August 29, 2007, the Trustee filed a Request for Entry of Default in this Adversary Proceeding, which currently is pending before this Court.

10. Pursuant to the Complaint, the Trustee seeks the following judicial determination:

a. That there is no Lili Lin residing in China that has a lien against the Debtor's Residence or the Sale Proceeds by virtue of the Note or Disputed Trust Deed;

b. That there was no Lili Lin residing in China who loaned money to the Debtor in accordance with the Note; and

c. That the Lili Lin who was the intended beneficiary of the disputed Note and Trust Deed was the Lili Lin who resides in Artesia, California, and not any claimed Lili Lin allegedly residing in China.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of September, 2007, at Woodland Hills, California.

/s/
Robyn B. Sokol

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EXHIBIT 42: LIN OF CHINA'S RESPONSE TO ORDER TO SHOW CAUSE IN DECLARATORY RELIEF ACTION, EXHIBITS 6-7

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA,
LOS ANGELES DIVISION

Case No.: LA04-10052-TD
Adv. No.: AD07-01102TD

Defendant Lili Lin's Response to
the Order to Show Cause ("OSC")
of September 27, 2007

OSC

Date:	April 3, 2008
Time:	11:00 a.m.
Location:	Courthouse 1345 US Bankruptcy Court 255 East Temple Street Los Angeles, CA 90012

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In re

Stephen Law, an individual,

Debtor.

SSN xxx-xx-6513

Alfred Siegel, Chapter 7 Trustee,

Plaintiff,

vs.

Lili Lin,

Defendant,

Defendants,

TO PLAINTIFF AND TO ALL OTHER INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

Defendant, Lili Lin, through her counsel, Peter C. Chow responds to the Order to Show Cause ("OSC") of September 27, 2007 as follows:

Defendant, Lili Lin, is a citizen of the People's Republic of China ("China"). A copy of Ms. Lin's Identification Card from China and its English translation are attached hereto as Exhibit 1.

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Defendant Lin and Debtor, Stephen Law and his ex-wife, Connie Chang, were classmates in China. See Exhibit 2, Declaration of Lili Lin.

From February to March of 1998, Defendant Lin loaned about $168,000 to Stephen Law. Please see Declaration of Lili Lin.

Some of the monies of Defendant Lin's loan were wired transferred into Stephen Law's account at Cal Fed, account Number 724-004809-5. Attached are as Exhibits 3 and 4 are records of Lili Lin's savings account, #476280 1-0188-051248-7, along with translation, and 2 pages of the Cal Fed's account statement.

There were two transfers. One was made on or about February 20, 1998 and another was made on or about March 17, 1998. Due to laws in China, large amount of money was not allowed to be transferred out of the country. Therefore, these monies were first given to Yingying Luo who then delivered to Li Zhang in Hong Kong to be transferred into Stephen Law's Cal Fed account in California. Please see Yingying Luo's Declaration (Exhibit 5) and Li Zhang's Declaration (Exhibit 6).

Stephen Law executed a promissory note for Defendant Lin's loan which was secured by Stephen Law's home by a deed of trust. Copies of the Promissory note and the Deed of Trust are collectively attached hereto as Exhibit 7.

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The remainder of the loan was kept by Stephen Law. Please see Declaration of Stephen Law (Exhibit 8). Stephen Law did make a number of payments pursuant to the promissory note. See Exhibit 9.

Dated: February 29, 2008 Chow & Hamilton

By: /s/ _____
Peter C. Chow
Attorney for Defendant Lin

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EXHIBIT 6 TO LIN OF CHINA'S RESPONSE TO ORDER TO SHOW CAUSE IN DECLARATORY RELIEF ACTION

DECLARATION OF LI ZHANG

I, Li Zhang, (Zhang, Li) declare as follows:

I am over the age of 18 years and am not the party in any lawsuit of Stephen Law (aka Zhanjun Luo). My business address is 11-15/F, R & F properties Group Building, 19 Jiao Chang Dong Road, Guangzhou, China. I have personal knowledge of the facts set forth below and could and would testify competently thereto if called upon to do so.

On or about February 1998, Yingying Luo personally delivered to me in cash in amount of about USD$49,765.00. On or about February 23, 1998, I wired these cash in amount of USD$49,680.00 after cost of wire transfer fees to Stephen Law's account of California Federal Bank of United States, Account Number 724-004809-5.

On or about March 1998, Yingying Luo personally handed to me other cash in amount of about USD$62,500.00. On or about March 16, 1998, I wired these cash in amount of USD$62,415.00 after all the costs including wire transfer fees to Mr. Law's California Federal Bank Account in the United States, account Number 724-004809-5 as Mr. Law's instruction. I further told Yingying Luo that

the said money had been wired to Mr. Law's California Federal Bank Account in the United States.

I declare under a penalty of perjury of the laws of the United States that above statements and the forgoing is true and correct, and this declaration executed on the 21st of January 2008 in City of Guangzhou, China.

/s/_____

Li Zhang (Zhang, Li)

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SEE SUPPLEMENTAL APPENDIX

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FOR

EXHIBIT 42: EXHIBIT 7 TO LIN OF CHINA'S RESPONSE TO ORDER TO SHOW CAUSE IN DECLARATORY RELIEF ACTION

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EXHIBIT 43: TRANSCRIPTION OF LAW'S FEB. 2004 MEETING OF CREDITORS

In Re: STEPHEN LAW

Chapter 7, Case No. LA04-10052-TD
February 11, 2004 Meeting of Creditors

Debtor:	Stephen Law	("Debtor")
Debtor's Atty:		
Trustee:	Alfred H. Siegel	("Trustee")
Creditor's Atty:	Jerry LaCues	("LaCues")

****

Trustee: Ladies and gentlemen good morning. Today's date is February 11, 2004 and its about 8 o'clock in the morning. This is a meeting of creditors set forth for section 341(a) bankruptcy code. My name is Alfred Siegel and have been appointed interim trustee of the cases you heard on the calendar this morning. Before I begin, are there any creditors who wish to nominate and lect a different Chapter 7 trustee? Ok, I see no responses therefore I will serve as the permanent Chapter 7 trustee. This

is an administrative hearing which will allow me and creditors an opportunity to ask you questions regarding the schedules and statements you have filed under penalty of perjury. Your schedules have been thoroughly reviewed in my office so we will hopefully not have to spend a lot of time going threw them again this morning. When you come up here for your hearing you will notice that there are microphones on the table, that is because these hearings are being recorded but not amplified. So when you come up here, please speak clearly. Remember you will be responding to questions hear under path. Making any false statements in the proceeding either by your oral proceeding or by your written schedules is a federal crime and punishable by imprisonment, fine, or both. The FBI will investigate all bankruptcy crimes. If you are a creditor in a case, wait for the name in that case to be called, when it is called you can come over here and sit on my right. When I have concluded my questioning of the debtor, I will allow you time to do so. Those chairs are also reserved for debtor's council. Debtors, when your name is called, you will come over here and sit to my left. I will be calling additional debtors to sit in the second row of chairs. So when these people are finished with their hearing, they will move from those chairs, to those chairs. The

whole idea is to keep things moving and get you out of here as quickly as possible. In the regard, this room needs to be kept quiet. If you have any reason to discuss your matter with your attorney or family member you should do so but not in this room. Please do it outside. If someone continues to disrupt this proceeding, I will ask them to leave and you will have to come back on my next continue date. My next hearing date will be March 4. If you stay quiet, I assure you I will get you through this as quickly as possible. Remember there is people sitting up here, they want to get out of here. It is disrespectful for people to be making a lot of noise when they are up here because it means they got to be here longer. So lets just work together as a team and we will get you through this as quickly as possible. I want to remind everyone once again that you have to read this green pamphlet. You will be asked under oath if you have and if you come up here and say you just got it or have not read it, you will have to get down and do so. Also, if you are a pro per debtor, that means your schedules were prepared by somebody other than an attorney, you must completely fill in the yellow form before you come up here as well and they are also on the back table. So your cooperation is appreciated. Keep it quiet in here. I am going to take two cases out of order. The

first is number 15, Amelia Robles. Please sit in the first row. The second is 16, Nicholas Delagardell. You will be in the second row. Remember when you come up here, please present my administrator with your photo id and your verification of your social security number.

Trustee: Number 26 Stephen Law, is 28 present? Ada Jordin, have a seat in second row please . . . Please raise your right hand, do you solemnly swear to tell the truth, the whole truth, and nothing but the truth so help you God?

Law: Yes.

Trustee: State your name for the record.

Law: Stephen Law.

Trustee: Current address Mr. Law.

Law: 1650 Del Monte Street Hacienda Heights, CA 91745.

Trustee: Debtor has provided a social security card that is agreed to the schedule. However, the trustees office has requested that before your hearing can be concluded you need to provide me an original print out from the SSA which gives your name and social security number.

Law: yeah thats the one.. Uh .. drivers license says aka Law.

Trustee: The trustee's office says you must produce a print out from the SSA so you have to go to the SSA and have them give you a print out of what your social security number is . . . that is the request they have given me. Did you read the green pamphlet?

Law: Yes.

Trustee: Did you read your schedules and statements before you signed them?

Law: Yes.

Trustee: Did you sign them yourself?

Law: Yes.

Trustee: Are those schedules and statements true and accurate?

Law: Yes.

Trustee: Are there any errors or omissions you know of?

Law: No.

Trustee: Have you filed for bankruptcy before?

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Law: Yes.

Trustee: Who prepared these schedules for you?

Law: Myself.

Trustee: According to your form 1015(2) you did file a case in 95?

Law: Yeah.

Trustee: The property on Lemoyne in Hacienda Heights, is that your home?

Law: Yes.

Trustee: Are you the sole owner?

Law: Yes.

Trustee: How do you know the value of the property is $363,000?

Law: According to the County Assessors office and also I estimate about $400,000 by other houses.

Trustee: How did you explain the fact that you have secured claims for about $100,000 more than your home?

Law: Im sorry?

Trustee: Well you have a first of $147,000 and a second of $156,000 then you have an abstract judgment from Cau Min Li, what is that about sir?

Law: The judgment?

Trustee: Yes, what created that judgment?

Law: That judgment was a [inaudible] judgement in Pomona.

Trustee: What did it regard?

Law: petition judgment.

Trustee: For what? What was the lawsuit about?

Law: Lawsuit about malicious prosecution.

Trustee: So Mr. Li sued you for malicious prosecution?

Law: Yes.

Trustee: He Won?

Law: Yes.

Trustee: He prevailed against you and he obtained an abstract judgement and he now has a lien on your property. Is that correct?

Law: Yes.

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Trustee: Are there any creditors taking part in this matter?

LaCues: Yes there is.

Trustee: Sir could you have a seat please? Very well, go ahead.

LaCues: My name is Jerry LaCues and I represent the creditor Cau Min Li.

LaCues: Mr. Law do you know who Lili Lin is?

Law: Yes.

LaCues: Any who is Lili Lin?

Law: A creditor who is with the association with credit, a second trustee.

LaCues: You listed the second deed of trust holder as Lin Mortgage and Associates in China, do you know what the name is on the deed of trust?

Law: Yes.

LaCues: What is the name on the second date of trust?

Law: Lili Lin.

LaCues: And do you know what the mailing address of Lili Lin is on the deed of trust?

Law: It is 1650 Hacienda Heights.

LaCues: And that's your residence. Is that correct?

Law: Yes.

LaCues: Was Lili Lin residing at your address?

Law: No.

LaCues: How much money did you receive in 1999 from either Lili Lin or Lin Mortage Associates?

Law: $168,000.

LaCues: Was that deposited into a bank account?

Law: No.

LaCues: Where was the $168,000 deposited?

Law: That was a keeping on the title.

LaCues: Pardon me?

Law: That was a keeping on the title.

LaCues: What did you do with the $168,000?

Law: It was [inaudible] to another creditor and I paid them.

LaCues: What was the name of that creditor?

Law: I believe I told your guy in the State Court - he is on the [inaudible].

LaCues: What is the name of the creditor?

Law: Those are the creditor on the

Trustee: Hold on a minute . . .

Trustee: On the 8:00 o'clock calendar, this is matter 26, Steven Law. Mr. Law is being questioned by creditors' counsel. Go ahead.

LaCues: Who did you pay off the $168,000?

Law: This other guy, Tonio, he's with State Hall. Ok, both of the people you depend on, getting paid for . . .

LaCues: What are their names?

Law: Adi Mein, Song Mein, another Ms. Mein, Thong, all those are people in State Hall.

LaCues: And do you have evidence of the payment to them?

Law: Yes.

LaCues: You have evidence of payments that you've made on the loan since you received that loan in 1999?

Law: They do have the receipts.

LaCues: How did you make payments to them?

Law: I made payment by . . . and Vanessa got some money, the people go to China for one month or two month to pay them.

LaCues: From what account do you make the payment?

Law: What do you mean, what account?

LaCues: Do you pay another person money to make a payment on that note?

Law: Yeah, I pay the people on the note.

LaCues: And how do you pay them? By check?

Law: By cash.

LaCues: And where do you get the cash?

Law: I get the cash from my earnings.

LaCues: And do you have evidence of any cash that you received for the payment of this loan?

Law: Yes.

LaCues: Do you have receipts from the creditor?

Law: Yes.

LaCues: Was your property in escrow in January of this year?

Law: January of this year, last month?

LaCues: Yes.

Law: I think so.

LaCues: You think so? Was that a purchase escrow or a loan escrow?

Law: What?

LaCues: Was that an escrow to get a loan or was that an escrow to sell the property on the [inaudible]

Law: No, I didn't get any money from escrow. I didn't . . . .

LaCues: Why did you go into escrow?

Law: I said . . why should i go into escrow?

LaCues: Yes.

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Law: Because we tried to refinance.

LaCues: Okay, to whom did you try to refinance?

Law: Washington Mutual.

LaCues: And do you have documents in your possession regarding that loan?

Law: No.

LaCues: Do you know who the escrow company was?

Law: I don't think that we opened an escrow though. There was no reason to do it.

LaCues: Do you know where the escrow company is located?

Law: No.

LaCues: Do you know what amount of loan you were applying for?

Law: No amount of loan I was applying for. It was something I get to pay off [inaudible].

LaCues: And how much was that?

Law: That would be 210 something.

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LaCues: Do you know if an appraisal was done on the property?

Law: No.

LaCues: I have no further questions. Thank you.

SIEGEL: I have a few questions, thank you.

TRUSTEE: This matter will be continued until March 4th at 8:00 o' clock because we need to provide an original printout from the Social Security Administration that will indicate your social security number.

Law: Should I send you a copy of the Social Security printout?

Trustee: No, you need to physically come here and bring the printout from the SSA that has your name on it and your social security number. You need to return to do that.

Law: So can I send them out to you?

Trustee: Sir, you need to come back. Be here on March 4th at 8:00 o'clock and you need to bring with you a printout from the Social Security Administration with you name and social security number on it. The original paper.

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Law: Okay.

Trustee: Okay, we are still on the 8:00 o'clock calendar. Is there anybody here that was late for the 8:00 o'clock calendar. I've got three matters; I've got R&J Connection; Debra Baker or Laticia Guerra. Anyone by that name here?

APPENDIX U — DECLARATION OF STEVEN T. GUBNER SUPPORTING MOTION TO SURCHARGE (APRIL 2008)

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA,
LOS ANGELES DIVISION

Case No. 2: 04-bk-10052-TD Chapter 7

DECLARATION OF STEVEN T. GUBNER IN SUPPORT OF MOTION TO SURCHARGE DEBTOR'S HOMESTEAD EXEMPTION

[Motion to Surcharge Debtor's Homestead Exemption_ filed concurrently herewith]

Hearing Date

Date: May 21, 2008
Time: 10:30 a.m.
Place: Courtroom 1345
U.S. Bankruptcy Court
255 East Temple Street
Los Angeles, CA 90012

In re

STEPHEN LAW, an individual

Debtor.

SSN xxx-xx-6513

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DECLARATION OF STEVEN T. GUBNER

I, Steven T. Gubner, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts of the State of California, and before this United States Bankruptcy Court, and am a member of Ezra Brutzkus Gubner LLP, attorneys for the Trustee herein. I have personal knowledge of the facts set forth below, I could and would testify competently thereto.

2. I make this declaration in support of the Motion to Surcharge Debtor's Homestead Exemption ("Surcharge Motion") filed concurrently herewith. All capitalized terms used herein are as defined in the Surcharge Motion.

3. The Bankruptcy Case was initiated by the filing of a voluntary chapter 7 petition on January 5, 2004 (the "Petition Date"). The Debtor reflected the Property on his schedules as an asset owned by him as of the Petition Date.

4. Attached to the Surcharge Motion as Exhibit "1" is a true and correct copy of the Fraud Complaint filed by the Trustee on or about June 8, 2004.

5. Attached to the Surcharge Motion as Exhibit "2" is a true and correct copy of the Disputed Trust Deed and Note obtained by my firm from the Office of the County Recorder of the County of Los Angeles.

6. The Disputed Trust Deed shows on its face page that it was recorded on a date when the state court action

styled *Cau-Min Li v. Law*, LASC Case No. KC 025668 was pending against the Debtor. A true and correct copy of the State Court Judgment against Debtor in the amount of $131,821.74 is attached to the Surcharge Motion as Exhibit "3." The State Court Judgment included a finding at page 2 lls. 10-11 that Debtor's "acts and conduct merit reaffirmation as a vexatious litigant, from August 25, 1995, as of July 8, 1999." The State Court Judgment was entered within four months of the recording of the Disputed Trust Deed.

7. Attached to the Surcharge Motion as Exhibit "4" is a true and correct copy of the Debtor's Schedule D herein.

8. Attached to the Surcharge Motion as Exhibit "6" is a true and correct copy of the Stipulated Judgment. With this exhibit, and all subsequent exhibits hereto that provide the Court copies of filed pleadings, I am familiar with the documents and to the extent necessary request judicial notice thereof.

9. Attached to the Surcharge Motion as Exhibit "7" is a true and correct copy of the 9019 Motion.

10. Attached to the Surcharge Motion as Exhibit "8" is a true and correct copy of the Order approving the 9019 Motion.

11. Attached to the Surcharge Motion as Exhibit "9" is a true and correct copy of the Transcript of the hearing on the 9019 Motion.

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12. Attached to the Surcharge Motion as Exhibit "10" and is a true and correct copy of the BAP Judgment affirming the order approving the 9019 Motion dated July 10, 2007.

13. Attached to the Surcharge Motion as Exhibit "11" is a true and correct copy of the *pro se* answer filed by Lili Lin of China to the Fraud Complaint on May 31, 2005. I reviewed the docket in this case and found that although Peter Chow previously appeared on behalf of Lili Lin of China, no substitution of attorney had been filed.

14. Attached to the Surcharge Motion as Exhibit "12" is a true and correct copy of the Reconsideration Motion filed by Lili Lin of China. The Court denied the Reconsideration Motion at a hearing on July 6, 2005, at which Lili Lin of China did not appear.

15. Attached to the Surcharge Motion as Exhibit "13" is a true and correct copy of the Order denying the Reconsideration Motion.

16. To my knowledge, although there are numerous subsequent pleading and declarations ostensibly filed by Lili Lin of China in the Fraud Adversary Proceeding, Lili Lin of China has never physically appeared at the Bankruptcy Court.

17. Attached to the Surcharge Motion as Exhibit "14" is a true and correct copy of the Order Granting the Turnover Motion.

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18. On or about August 19, 2005, Debtor filed Emergency Motions for Stay of the Turnover Order Pending Appeal with both the BAP and the Ninth Circuit. Both motions were denied. Attached to the Surcharge Motion as Exhibits "15" and "16," respectively, are true and correct copies of the Orders of the BAP and Ninth Circuit denying a stay.

19. Attached to the Surcharge Motion as Exhibit "17" is a true and correct copy of the Sale Motion. A hearing on the Sale Motion took place on February 1, 2006 and an auction to purchase the Property was conducted. The highest and best offer to purchase the Property was $680,000.00 and the Sale Motion was granted.

20. Attached to the Surcharge Motion as Exhibit "18" is a true and correct copy of the Sale Order entered on February 22, 2006. Escrow on the sale of the Property closed on March 9, 2006. Attached to the Surcharge Motion as Exhibit "19" is a true and correct copy of the Seller Final Closing Statement with respect to the sale of the Property.

21. Attached to the Surcharge Motion as Exhibit "20" is a true and correct copy of the Sale Reconsideration Motion.

22. Attached to the Surcharge Motion as Exhibit "21" is a true and correct copy of the Order denying the Sale Reconsideration Motion and the Debtor's oral motion for a stay pending appeal, entered on May 4, 2006. Lili Lin of China again failed to appear at the hearing on the Sale Reconsideration Motion.

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23. Attached to the Surcharge Motion as Exhibit "22" is a true and correct copy of the BAP Judgment affirming the Bankruptcy Court's denial of the Debtor's discharge, dated December 29, 2006.

24. On April 12, 2004, plaintiffs Shong-Ching Tong, Yei Hwei Tong, Cau-Min Li, and the Estate of Robert Shucker filed an adversary complaint against Debtor to determine the dischargeability of a debt (the "First Dischargeability Action") and to object to the granting of a discharge to Debtor (the "First Dischargeability Complaint").

25. On April 8, 2004, plaintiffs Cau-Min Li and U.S. Judgment Enforcement Agency filed a separate adversary complaint against the Debtor to determine dischargeability of a debt (the "Second Dischargeability Action") and to object to the granting of a discharge to the Debtor (the "Second Dischargeability Complaint").

26. The Trustee was substituted in as Plaintiff in the First Dischargeability Action and in the Second Dischargeability Action. The First and Second Dischargeability Actions were consolidated on November 15, 2004 (the "Consolidated Dischargeability Action").

27. After the Trustee was substituted in as Plaintiff, the First and Second Dischargeability Complaints were amended to make clear that a denial of discharge was sought because the Debtor knowingly and fraudulently made a false oath or account by listing in his Schedule D a fictitious trust deed as an encumbrance on the Property.

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28. On October 26, 2004, this office served Debtor with the Trustee's Interrogatories, Request for Admissions, and Request for Production of Documents (hereinafter collectively "Discovery"). After an extension of time, on December 29, 2004, Debtor served incomplete responses.

29. The Debtor met and conferred with Trustee's counsel. Trustee's counsel sent Debtor a proposed Stipulation Regarding Discovery Dispute ("Stipulation") and requested that Debtor prepare his contentions to the Stipulation. Debtor failed to respond and the Trustee's motion to compel responses from the Debtor (the "Motion to Compel") was filed with the Court, which Motion to Compel reflects these facts.

30. Attached to the Surcharge Motion as Exhibit "23" is a true and correct copy of the Discovery Order, entered on April 28, 2005. The Debtor has never paid the sanctions awarded to the Trustee by the Discovery Order.

31. I am informed and believe that at the May 18, 2005 hearing in the Consolidated Dischargeability Action, the Court was informed by Trustee's counsel that the Trustee did not receive the discovery responses as required by the Discovery Order.

32. I am informed and believe that at the May 18, 2005 hearing the Debtor informed the Court that an appeal of the Discovery Order was pending and the Court advised Debtor that an appeal would not have an effect on his duties to furnish information.

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33. The Trustee's Motion to Strike-Dischargeability was filed on May 27, 2005, after the Debtor failed to provide the Trustee with discovery responses, or pay monetary sanctions in compliance with the Discovery Order. Attached to the Surcharge Motion as Exhibit "24" is a true and correct copy of the Order Granting Trustee's Motion to Strike Answer in the Nondischargeability Action, entered on August 10, 2005. The Debtor appealed this order to the BAP, which affirmed the Order, and then filed an appeal to the Ninth Circuit, which remains pending.

34. To date, Debtor has filed eleven appeals with the BAP and five appeals with the Ninth Circuit. This office, as Trustee's counsel, has expended hundreds of hours and incurred thousand of dollars in fees and costs monitoring and responding to the Debtor's numerous appeals.

35. The following is a list and description of each appeal filed in this case:

BAP Appeals

a. No. 05-1303 - By Lili Lin of China of the Order Granting Compromise of Controversy Approving the Stipulated Judgment to Avoid and Recover the Comfort Lien;

b. No. 05-1352 - By the Debtor of the Order to Strike the Debtor's Answer to the Trustee's Complaint to Deny the Debtor's Discharge;

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c. No. 05-1344 - By the Debtor of the Order Granting Turnover;

d. No. 06-1180 - By the Debtor of the Order to Surcharge the Debtor's Homestead Exemption;

e. No. 06-1195 - By the Debtor of the Order granting the Sale Motion;

f. No. 06-1379 - By the Debtor of the Order on Trustee's Continued Motion to Sell Real Property Free and Clear of Liens, Interests, and Encumbrances;

g. No. 06-1390 - By the Debtor of the Order Granting Motion for Summary Judgment in favor of Cau-Min Li;

h. No. 06-1427 - By the Debtor of the Order Granting Compromise of Controversy Approving the Agreement between the Trustee and creditors of the bankruptcy estate;

i. No. 07-1127 filed March 12, 2007 - By the Debtor of the Order denying his Motion to Compel the Trustee to Pay Debtor's Homestead Exemption;

j. No. 07-1323 filed August 27, 2007 - By Lili Lin of China and Debtor of Order Granting Trustees Motion to Strike Lili Lin of China's Answer to Complaint for Declaratory Relief (*see* Declaratory Relief Action below);

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k. No. 08-1002 filed January 16, 2008 - By the Debtor of Order Denying his Motion to Compel the Trustee to Pay Debtor's Homestead Exemption II.

Ninth Circuit Appeals

a. No. 07-55194 - By the Debtor of the BAP's Order Denying Motion for Rehearing.

b. No. 07-55200 - By Lili Lin of China of the BAP's Order Denying Motion for Rehearing.

c. No. 07-56239 - By the Debtor of the BAP's Order affirming the judgment of the Bankruptcy Court approving the compromise between the Trustee and the Judgment Creditors and granting the Sale Motion.

36. Attached to the Surcharge Motion as Exhibit "25" is a true and correct copy of the BAP Memorandum of Decision.

37. The Trustee's Declaratory Relief Complaint was filed on or about February 8, 2007. The Summons was issued by the Court on or about February 9, 2007.

38. Attached to the Surcharge Motion as Exhibit 26 is a true and correct copy of the Acknowledgement of Receipt signed by Andrew E. Smyth on behalf of Lili Lin of China in the Declaratory Relief Action.

39. Attached to the Surcharge Motion as Exhibit "27" is a true and correct copy of an Answer filed in

the Declaratory Relief Action by Andrew E. Smyth as "Attorneys for Debtors" on March 5, 2007. Attached to the Surcharge Motion as Exhibit "28" is a true and correct copy of an identical Answer filed in the Declaratory Relief Action by Andrew E. Smyth on March 9, 2007.

40. Attached to the Surcharge Motion as Exhibit "29" is a true and correct copy of the Motion for Judgment on the Pleadings filed in the Declaratory Relief Action on or about April 17, 2007.

41. Attached to the Surcharge Motion as Exhibit "30" is a true and correct copy of the Motion to Dismiss the Complaint for Declaration Relief filed on behalf of Lili Lin of China on or about May 29, 2007.

42. On or about June 1, 2007. the Trustee filed a Motion to Strike the Answer filed by Mr. Smyth for Lili Lin of China ("Motion to Strike-Lili Lin") and a Motion for Sanctions.

43. Attached to the Surcharge Motion as Exhibit "31" is a true and correct copy of the Opposition to Motion for Sanctions filed by Mr. Smyth on or about June 12, 2007.

44. Attached to the Surcharge Motion as Exhibit "32" is a true and correct copy of the Debtor's Declaration and Objections to the Trustee's Motion for Sanctions, including the attached e-mails which Debtor claims had been sent by Lili Lin of China and which he translated from Chinese into English.

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45. The Trustee noticed Lili Lin of China's deposition for July 26, 2007. On July 25, 2007, this office was notified by Mr. Smyth that his client would not be appearing.

46. On or about August 17, 2007, the Court granted the Motion to Strike-Lili Lin, striking Lili Lin of China's Answer in its entirety, and denied Lili Lin of China's Motion to Dismiss. On or about August 27, 2007, Lili Lin of China filed a Notice of Appeal of the order granting the Motion to Strike-Lili Lin.

47. On October 4, 2007, the Clerk of the BAP issued an Order requiring Appellants to show cause why the appeal should not be dismissed for lack of jurisdiction (the "BAP Clerk's Order"), a true and correct copy of which is attached to the Surcharge Motion as Exhibit "33."

48. A Response by Lili Lin and Stephen Law to the BAP Clerk's Order was served on the Trustee on October 16, 2007, a true and correct copy which is attached to the Surcharge Motion as Exhibit "34."

49. Attached to the Surcharge Motion as Exhibit "35" is a true and correct copy of Lili Lin of China's pro se Answer to the Declaratory Relief Complaint, filed on or about August 27, 2007.

50. Attached to the Surcharge Motion as Exhibit "36" is a true and correct copy of Responses to Plaintiff's Interrogatories.

51. On or about September 11, 2007, the Trustee filed a Motion for Default Judgment against Lili Lin of China.

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52. Attached to the Surcharge Motion as Exhibit "37" is a true and correct copy of the October 1, 2007 Court Order.

53. Attached to the Surcharge Motion as Exhibits "38" and "39" are true and correct copies of Orders entered on October 24, 2007 denying the Trustee's Request for Entry of Default and the Trustee's Motion for Default Judgment, respectively.

54. On November 14, 2007, the Court continued the hearing on the Order to Show Cause to January 30, 2008.

55. Attached to the Surcharge Motion as Exhibits "40" and "41" are true and correct copies of the Substitution of Attorney filed on or about January 30, 2008, and a Status Report filed by Andrew Smyth, respectively.

56. At the hearing on January 30, 2008, Mr. Chow represented to the Court that he had met with Lili Lin of China in Hong Kong in December 2007, that he represented her and that he had copies of documents, including a copy of the Disputed Trust Deed. Mr. Chow requested a continuance because of his recent engagement and the Bankruptcy Court continued the hearing on the Order to Show Cause to April 3, 2008.

57. Attached to the Surcharge Motion as Exhibit "42" is a true and correct copy of Defendant Lili Lin's Response to Order to Show Cause ("OSC") of September 27, 2007 filed on March 3, 2008.

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58. In or about November 2004, this office ordered from the United States Trustee's office, the cassette tape recording from the Debtor's February 11, 2004 Meeting of Creditors. On or about November 29, 2004, a transcription of these tapes was typed by an employee of this firm at my direction and under my supervision. The cassette tapes received from the United States Trustee's office and the typewritten transcription were kept with the file retained by this firm in the ordinary course of business throughout the course of its representation of the Trustee in this case.

59. On or about April 18, 2008, I instructed Diane Browning, a current employee of this firm, to listen to said cassette tapes and confirm that the transcript thereof was accurate. Attached to the Surcharge Motion as Exhibit "43" is a true and correct copy of an accurate transcription of the Debtor's February 11, 2004 Meeting of Creditors as verified and corrected by Ms. Diane Browning. See attached Declaration of Diane Browning with respect thereto.

60. I attended the hearing on April 3, 2008 in the Declaratory Relief Action, whereat the Court vacated all answers and dismissed the Declaratory Relief Complaint without prejudice. The Court stated on the record that the basis for vacating the answers and dismissing the complaint was that the Court was not persuaded that Lili Lin of China had been served and submitted to the jurisdiction of the Court, notwithstanding her appearance through counsel and in pro per. Mr. Chow then stated to the Bankruptcy Court that he was not authorized to accept service for his client. A true and correct copy of

the Order dismissing the Declaratory Relief Complaint, entered on April 22, 2008, is attached to the Surcharge Motion as Exhibit "44."

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 25th day of April, 2008 at Woodland Hills, California.

/s/_____
Steven T. Gubner

APPENDIX V — SELECT EXHIBIT TO TRUSTEE'S REPLY SUPPORTING SECOND MOTION TO SURCHARGE

DECLARATION OF RICHARD L. MANN (MAY 2008)

DECLARATION OF RICHARD L. MANN

I, Richard L. Mann, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts of the State of California, and before this United States Bankruptcy Court, and am a member of Ezra Brutzkus Gubner LLP, attorneys for the Trustee herein. I have personal knowledge of the facts set forth below, and if called to testify I could and would testify competently thereto.

2. I make this declaration in support of the Reply to Debtor's Opposition to Motion to Surcharge Debtor's Homestead Exemption filed concurrently herewith. All capitalized terms used herein are as defined in the Surcharge Motion.

3. I was present Courtroom 1345 of the U.S. Bankruptcy Court at 255 East Temple Street Los Angeles, CA 90012 on January 30, 2008 when the above captioned matter was called by the Honorable Thomas B. Donovan, presiding.

4. Also present in the courtroom on that date and at that time, among others, were the Debtor and Peter C. Chow. attorney for the purported Lili Lin of China.

5. Mr. Chow stated to the Court that he had met in Hong Kong with a person he identified as Lili Lin several weeks before but had just been retained the day before that hearing. He further stated that he had copies of certain documents that he believed the Court had requested, including a copy of the Deed of Trust and Assignment of Rents recorded with the Los Angeles County Recorder as document 99 1179298. Mr. Chow also said that he had never seen the original of that Deed of Trust. Judge Donovan then reviewed the copies of the document.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 14, 2008 at Woodland Hills, California.

/s/_____

Richard L. Mann

APPENDIX W — SELECT EXHIBITS TO SUPPLEMENTAL MEMORANDUM IN SUPPORT OF TRUSTEE'S SECOND MOTION TO SURCHARGE

EXHIBIT 48: EXCERPT OF TRANSCRIPT OF DEPOSITION OF STEPHEN LAW

* * *

[156] Q Exhibit 12 to your deposition and Exhibit F to that exhibit, which is the Promissory Note secured by Deed of Trust.

So what you've just told me, I believe, is that even though you represented to the court that this document had been recorded, that that representation to the court in this Exhibit 12 was a mistake.

Is that what you're telling me?

A Correct.

Q Is the document that's attached as Exhibit F identical to the Promissory Note that was recorded?

A It's not the same.

Q Why is it not? How is it different?

A As far as I know, on there it did not have Lili Lin's birthday. When you mentioned the -- it's not the same as Exhibit 8.

Q Correct.

Did you prepare Exhibit 8, that document?

A Both were prepared by me.

Q "Both" being Exhibit 8 and Exhibit F to Exhibit 12. Okay.

A Yes, F.

Q The difference between the two documents [157] is that Exhibit 8, the part of that document that's the Promissory Note does not have a birth date and Exhibit F has a birth date.

A Basically, yes.

Q And in this pleading that you filed with the court, Exhibit 12, what you're saying here is, you're arguing to the court, as I understand your argument here, that Lili Lin of China is, in fact, the beneficiary because the Promissory Note shows her birth date of November 22.

Is that the argument you're making in lines 13 through 19 of page 4 of Exhibit 12? You're making the argument there that Lili Lin of China is, in fact, the true beneficiary because the Promissory Note has her birth date on it. Is that the argument you're making?

A Yes.

Q And to support that argument, you attached Exhibit F and represented to the court that that was the Note which had been recorded; correct?

A Yes.

Q And if you had attached the other Deed of Trust that was recorded, Exhibit 8, that document would not have supported your argument because it did not contain the birth date.

[158] Isn't that true?

A This argument is only that it did not get recorded. Two documents were signed on the same date. The same county officer signed it. Because Lili Lin was very clever, how to identify or differentiate which Lili Lin. That's why she requested me to add her birth date.

Q Who requested you to add her birth date?

A Lili Lin.

Q Of China?

A Yes.

Q When did she request that you add her birth date?

A During that time, June of '99.

Q Let's go back for a second.

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Isn't it true that if you had attached the Promissory Note that's Exhibit 8 to the pleading that's Exhibit 12, that that Promissory Note, that would not have supported your argument because it does not contain her birth date.

Isn't that true?

A If I didn't have that document, how would I tell which day is her birthday?

Q I didn't ask you that, did I? Listen to my question.

[159] You were drafting this pleading, and you had two different versions of the Promissory Note, one that had her birth date, Lili Lin of China's birth date on it, and one that didn't have her birth date on it.

Is that correct?

A Yes.

Q The one that didn't have her birth date on it, Exhibit 8, that would not have supported your argument that you made in that paragraph, would it?

A Well, if I didn't have that birth date here, then how would I support this?

Q Right. That's my point. You could have attached both of those documents, you could have attached either of those documents, but you attached the document that supported your argument, and you represented to the court that that document had been recorded.

Is that correct?

A The reason why it did not have a recording here is because it did not need to be recorded.

Q I didn't ask you that.

You had two different versions of the Promissory Note, one with Lili Lin of China's birth date and one without Lili Lin of China's birth date on [160] it; correct?

A Actually, this one is not the Promissory Note, this is the Deed of Trust.

Q Let's take a look at Exhibit 8. It says "Promissory Note - Straight - Secured by Deed of Trust."

A It's only part of the document. Actually, when it was recorded, it was named "Deed of Trust." Well, if you are a professional in doing law, you should know that in California, a Deed of Trust needs to be recorded, but Promissory Note doesn't need to be recorded in California. You find a bigger error in this pleading here, but obviously in Exhibit F did not have any recording, did not have a stamp in order to support my argument, because the true Promissory Note had her birthday there.

If we want to continue arguing, there is no point continuing. However, the court has denied the motion already, denied my motion for reconsideration.

Q At the time you prepared Exhibit 12 and you attached Exhibit F, you knew that Exhibit F had not been

recorded because it's obvious on its face. You knew this had not been recorded, didn't you?

A I told you already, I could have make a [161] little mistake. But that is very obvious that it did not have the County's stamp.

Q If you look at what you said, you said, "On or about June of 1999 Debtor made, executed and delivered to Lin of China, in writing, Deed of Trust and Promissory Note."

The Deed of Trust and Promissory Note is Exhibit 8, isn't it?

A Yes. But that --

Q That's the answer.

You identified here, Deed of Trust and Promissory Note, you identified as the ("Note"); correct?

A What do you mean?

Q Do you understand what it means when you do a pleading and you put something in parentheses and then a quote and then a capital letter, like where it says on line 14, "(Note")?

Do you understand the significance of that?

A Yes, it shows her birthday here.

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Q Mr. Law, I'm directing your attention to line 14 on page 4 of Exhibit 12. And look at the seventh word, which is ("Note").

Do you see that?

[162] A Yes.

Q Do you know what it means when you put something in a pleading in that format within quotes and within parentheses with a capital letter? Do you understand what that means?

A It means this document.

Q It means which document?

A Exhibit F.

Q Is Exhibit F a Deed of Trust and a Promissory Note?

A This is only a Note.

Q You just told me that (" Note") means Exhibit F. In your pleading you state that the ("Note") means the Deed of Trust and the Promissory Note.

A It could be that we Chinese, we used a wrong word here. When you look through my whole pleading, you can see this is not very good English. Even when the judge reads it, he asked me some of the questions he didn't understand.

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When you submit a document, if it's under penalty of perjury, you make mistakes, too.

Q Directing your attention to line 16 on page 4 of Exhibit 12, where it states, " Both the Note and the Trust Deed were recorded on or about June 28, [163] 1999."

A Yes, the Trust Deed was recorded.

Q When it says, " Both the Note and the Trust Deed were recorded on or about June 28, 1999."

Do you see that?

A Yes, I see it. As I mentioned, because it's English wording, I could have used wrong wording. I'm not a lawyer. Even if you're a lawyer and you make a mistake in your Declaration, are you perjuring yourself?

Q Mr. Law, you say both the Note and the Trust Deed were recorded. And then you say on line 18 the Note is attached as Exhibit F.

That wasn't recorded. You made a misrepresentation to the court and a misrepresentation that was crucial to your argument. Your argument was that the Note clearly identified Lili Lin's birth date as November 22, 1947, which clearly made her the beneficiary. And you attached documents that were not the documents you represented them to be. Now you're telling me that was all a mistake that just conveniently supported your argument?

A If this was a mistake, then the court could grant me a motion. Is this motion granted or denied?

[164] Q Mr. Law, you are arguing to the court here that there is a Note with Lili Lin's birth date that was recorded and you're presenting that as evidence and it wasn't true. And now you're telling me that was a mistake. And that's your position?

A Well, anybody, especially with my limited English, will make a mistake. It's very common. Even you make a mistake.

Q So you're telling me this was a mistake?

A That was a mistake.

Q Just a mistake?

A Yes. Anybody can see that this document was not recorded. The judge saw the original document.

Q You said before that Lili Lin of China asked you to add her birthday to the Promissory Note.

Is that correct?

A Correct.

Q When did she ask you to add her birth date to the Promissory Note?

A Around that period of time, June 1999.

Q If you say she asked you to add it to the Promissory Note, had she seen a Promissory Note that didn't have her birth date on it?

A I told her that there was one copy without [165] the birth date, the Deed of Trust.

Q There was one copy without the birth date. When did you tell her that?

A I told her the Deed of Trust original, when it was typed, it was without her birth day.

Q Who typed it?

A I told you; I answered your question already.

Q Did you type it?

A I did it.

Q When did you type it?

A June 1999.

Q The date that you had it notarized?

A I don't remember the detailed date; around that period of time.

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Q So you prepared this Deed of Trust and Promissory Note, Exhibit 8, that did not have Lili Lin of China's birth date on it; right?

A Yes. The Deed of Trust did not have the birth date.

Q I'm looking on page 2 of 6 at the bottom of page 3 at the top of Exhibit 8. And it says, "Promissory Note - Straight - Secured by Deed of Trust." That has no birth date on it; correct?

A Correct.

[166] Q And you told Lili Lin that you had prepared this and you said, "It doesn't have your birth date on it"?

A Yes. I forgot to put her birthday on.

Q I didn't ask you that. I said, did you tell her, "I prepared a Promissory Note - straight - Deed of Trust that doesn't have your birth date on it"?

A Yes.

Q Why did you tell her it didn't have her birth date?

A Because she just wanted to make sure that this document meant her. Because Lili Lin is a very common name in China, Chinese name.

Q Who brought up the issue of her birth date first, you or Lili Lin of China?

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A Lili Lin.

Q And why did she bring it up? Did she know that her birth date wasn't on the Deed of Trust? Why would she bring something like that up?

A Well, as I told you, because Lili Lin, this is a very common name in China. There are thousands and thousands of Lili Lins in China. That's why she was being very cautious in order to how to identify it was her. Even in Southern [167] California there are more than 10 to 20 of this kind of name.

Q And when you had this conversation with Lili Lin that you just described about her birth date, had you had the Deed of Trust, Exhibit 8, notarized?

A No.

Q So why didn't you just put her birth date on this document, Exhibit 8? Why didn't you just roll it back into your typewriter and type her birth date on it?

A Because in order to do that, I have to make the correction in the wording here. You can tell from the document, Exhibit 9.

Q Mr. Law, look at Exhibit F. It says on Exhibit F where you've typed in, "The order of Trustee, Lili Lin, (Date of Birth: 22nd Nov 1947)."

Do you see that?

A Yes.

Q Why didn't you just add that to the Promissory Note that's Exhibit 8 if it had not yet been notarized and it had not yet been recorded and you had these both recorded the same day and you were so concerned about her birthday, why didn't you just put it in, or why didn't you just go to the stationery store and buy a new one and start over again?

[168] A Well, this one line here you haven't read it, Such place as may be designated by the Trustee, Lili Lin."

In Exhibit 8 I cannot make an error in the middle and add something after that. Because this Promissory Note was an original Note. And the court had inspected without any correction.

Q Mr. Law, I'm talking about when you wrote this, not when the court looked at it.

You're telling me that you talked to Lili Lin, you prepared the Promissory Note - Straight - Deed of Trust, which is Exhibit 8. You then talked to Lili Lin on the telephone and you had a conversation. And she said, "I want my date of birth on this so there is no confusion."

Is that correct?

A Correct, so that you can easily identify it was her.

Q So why didn't you just do it on Exhibit 8? Why didn't you just either type it in or get a new one from the stationery store, which I assume is where you got that; is that correct? Did you get this blank from the stationery store or someplace like that?

A I don't remember where I bought it. It was 10 years ago.

[169] Q But you bought it somewhere?

A Yes.

Q And you could have gone and bought a new one and started over again and typed it in and made it all one document, which would have had her birth date on it and the Trust Deed and the Promissory Note and everything else.

A Why would I want to spend some money to do that? Whatever I did was none of your business.

Q Did you prepare the Promissory Note, which is Exhibit F, after you prepared the Deed of Trust, which is Exhibit 8?

A Yes.

Q And that was after your conversation with Lili Lin?

A Yes.

Appendix W

Q So after your conversation with Lili Lin, you had two documents, one that had her birth date on it, which is Exhibit F, and the Deed of Trust, which didn't have her birth date.

A Yes. At that time, I did not type this. I did not type up the Note yet.

Q After you typed up the Note, Exhibit F, you had two documents, the Note, which has her birth date, and the Deed of Trust and Promissory Note that [170] was recorded that doesn't have her birth date.

A Correct.

Q And you're telling me that Lili Lin is a very common name.

A Yes, of course. You can ask the interpreter.

Q Wouldn't it be just as confusing, then, if the Promissory Note didn't have the birth date on it? Couldn't this Promissory Note be a different Lili Lin than the Promissory Note that's Exhibit F?

A That was a possibility.

Q Weren't you concerned about that?

A Concerned about what?

Q That there could be some confusion between the two Promissory Notes.

A Because this is more clear.

Q What happened, in fact, was that there was some confusion because the Promissory Note and Deed of Trust, Exhibit 8, somehow got to the County Recorder and somehow somebody was going to foreclose on it and it wasn't Lili Lin of China.

Isn't that what you're telling me happened?

A I don't understand your question.

Q If the Promissory Note and Deed of Trust [171] that's Exhibit 8, if Lili Lin of China's birth date had been on that document, the Deed of Trust, Exhibit 8, then Lili Lin of Artesia clearly could not have sought to foreclose on it, as you're saying she tried to do, right, because it clearly would not have been her; right?

A Yes, of course.

Q So the absence of the birth date on this document is what caused all these problems because there was this confusion; right?

A The true copy, the Note, had her birthday on it.

Q I understand that. If her birthday had been on the Deed of Trust, then Lili Lin of Artesia could not have tried to foreclose on the Note because it would have identified somebody else other than her; correct?

A Yes, of course, a lot to benefit.

Q Because Lili Lin of China's birth date was not on the recorded document, anybody with the name of Lili Lin, then, who could identify herself as Lili Lin, could then claim to be the owner of that Deed of Trust if that person wanted to; right?

A If it happens, then I will call the FBI.

Q It did happen, didn't it, according to [172] you?

A Well, it happened because the Appellate Court said you made mistake.

Q You wrote Lili Lin of Artesia a letter saying basically something to the effect -- strike that.

> MR. MANN: Let's mark this has Exhibit 19. (Trustee's Exhibit 19 was marked for identification by the Deposition Officer and is attached hereto.)

MR. MANN: Mr. Law, you've been handed a document identified as Exhibit 19, which is a letter that appears to be from you to Lili Lin dated June 20, 2000.

Q Is that correct?

A Yes.

Q Do you recognize this document?

A Yes.

Q And in this document you say in the first paragraph that, "You are not the Lender Lili Lin loaned me the money, but you always have bad imagination that you owned the Note," "and you yelled at me and even you threatened me for $100, 000."

Right?

A Yes.

* * * *

EXHIBIT 49: EXCERPT OF TRANSCRIPT OF DEPOSITION OF STEPHEN LAW

* **

[55] Q So the copies that County Records Research mailed to you in response to the subpoena, that would be pages H-3, through and including H-11?

A Yes, I believe so.

Q Directing your attention, then, to H-7, which appears to be a letter from County Records Research John Holmberg to a Lili Lin dated March 23 , 2000; correct?

A Yes.

Q And on page H-6, that looks like a letter to County Records Research from a Lili Lin in Artesia that's not signed. And at the top there is a date 2-15-00.

Do you see that?

A Yes.

Q Now, it appears to me from these documents that Lili Lin of Artesia is asking County Records Research to begin foreclosure procedures on your house; is that right? Is that what it looks like to you?

A Yes.

Q So in February of 2000, it appears that she knew that there was a Trust Deed against your house securing a loan of $168,000 that was dated June 24, 1999.

[56] Is that the way this appears to you?

A Yes.

Q Did you tell Lili Lin of Artesia that you had a Trust Deed recorded against your house to secure a loan of $168,000?

A I don't remember very clearly, but I believe this was after I pressed charges against Lili Lin at the Superior court.

Q Well, this all was happening, apparently, in February of 2000.

A Yes. I believe at that time she was living in Artesia; therefore, the lawsuit was served to her at Artesia.

Q But did you tell Lili Lin of Artesia that you had a Trust Deed recorded against your house to secure an indebtedness of $168,000? Did you tell her of the existence of this Trust Deed?

A I believe that I might have mentioned that to her because her name happened to be the same as the lender. The friend that lent me the money was the same name.

Q Why do you think you may have mentioned that to her?

A Because I didn't want to make it confusing to her. Although her name was the same as my friend, [57] I don't want her to be confused, you know, about the name resemblance.

Q Why do you think she would be confused if she didn't know about it?

A Just because of the name, it was the same name.

Q But if she didn't already know that the Trust Deed existed, then why would she be confused? Unless you told her about it, she wouldn't have known about it. So there would be no reason for her to be confused if she didn't know it existed. How would she know it existed if you didn't tell her?

A Just because the name was the same as my friend, it's like, "Oh, you happen to have the same name as my friend," just like, "Oh, your name is the same as my brother's."

Appendix W

Q I can understand you're telling me you told her, "Okay, you have the same name as a friend of mine." But why would you tell her, " You have the same name as a friend of mine that I borrowed $168,000 from in June of 1999 and that I then recorded a Trust Deed against my house in her favor"? Why would you tell this tenant of yours all this information?

A It's a very normal thing to do. It's very common that someone would mention to the tenant about, [58] "Oh, by the way, the name is the same. And there was a lender who has the same name as yours."

It's not very unusual.

Q But why did you do it? Why did you tell this person who was your tenant all this information? How did she get all this information so she could file these papers with County Records Research; the appraiser's number on Exhibit H-6, the amount of the loan, all of this information? How do you think she got this information?

A I just feel that in a normal conversation, sometimes information would be provided. And plus this is a very open -- I mean, this is public records. If anyone wants to look at the records, they could find the records from the county offices.

Q Didn't you give her a copy of the Trust Deed and the note and tell her to foreclose? Isn't that what happened?

A I remember I did not do that.

Q How do you think she got it?

A First of all, I don't think I told her that.

Second of all, I remember that her attorney said that there was a copy. And I believe that these are public records; anybody could obtain a [59] copy of those records.

Q You don't believe you told her what?

A Correction. Actually, I did mention to her.

Q Did mention to her what?

A About the fact that I borrowed from Lili Lin $168,000.

Q You did tell her that?

A Yes.

Q Why?

A I remember I mentioned that to her; and that she always had that image or that impression thinking she was the one who lent me the money, her imagination.

Q Why do you say that?

A Because I remember that she told me that she was the lender. Whether or not she was just joking with me. I don't know the intention of her telling me that.

Q When did she tell you that she was the lender?

A Around that same time, around 2000 or 2001.

Q Was it before or after you sued her the first time?

* * * *

EXHIBIT 51: EXCERPT OF TRANSCRIPT OF DEPOSITION OF STEPHEN LAW

* * *

[189] Q Do you have those? If you want to look through the bag, maybe they're in there and I missed them.

A That's everything I have in the bag.

Q Would you look through the bag and see if they're there.

And while you're looking, you can also look for the responses to the Form Interrogatories and the Responses to Interrogatories and Requests for Admission.

A Here (indicating).

Q So they're attached to something else?

A Yes.

Q Can I see that document you're looking at, please, the whole thing?

A Yes.

Q Why don't you put those all back in the bag and I'll copy them and send them back to you.

Okay?

A You mean this --

Q Everything.

I'm handing the court reporter a document entitled "Claim of Exemption" and ask it be marked as Exhibit 21.

|190| (Trustee's Exhibit 21 was marked for identification by the Deposition Officer and is attached hereto.)

MR. MANN: Mr. Law, you've been handed a document marked as Exhibit 21 to this deposition, which is a document entitled, "Claim of Exemption."

Q Is that your signature on the bottom of page 1?

A '03 September?

Q My question is, is that your signature on the bottom of page 1?

A It should be, yes.

Q Do you recall filling this form out?

A I don't quite remember because it happened in 2003.

Q Do you know what it is?

A It's a wage garnishment.

Q What does it say above "wage garnishment"?

A I don't know what this is about.

Q Did you fill it out and sign it?

A It should be, yes.

Q Do you know what it is?

A Claim of Exemption. It was regarding wage garnishment.

Q Had your wages been garnished?

[191] A I don't remember when that was.

Q This relates to a lawsuit filed by Cau-Min Li against you. Do you see it at the top?

A Yes.

Q And did Cau-Min Li get a judgment against you in that litigation?

A Yes.

Q And Mr. Cau-Min Li -- I assume it's a Mr.

A Yes.

Q Did Mr. Cau-Min Li garnish your wages?

A Seems to be so. I don't quite remember.

Q Do you understand what a wage garnishment is?

A Yes.

Q And do you understand what a Claim of Exemption is, what this form was intended to do?

A Yes, I do.

Q It's to restrict the amount of your wages that the creditor can take.

Is that your understanding?

A Yes.

Q So it would be in your best interest, then, to try to exempt as much as possible; correct?

A Yes.

Appendix W

Q Turning to page 3 of this document where [192] it says at the top, under number 4, " The monthly expenses for me, my spouse, and other dependents, rent or house payment and maintenance." And it lists $1,230 a month.

A Yes.

Q And then down at number 5, it says, "the following debts," and there is none listed there.

Do you see that, number 5?

A Yes.

Q "I, my spouse, and other dependents owe the following debts," and there are none there.

A Yes.

Q In 2003, did you owe Lili Lin money on the Promissory Note?

A Yes.

Q Why didn't you list it on this form?

A Could be because of the debt from outside of this country. That's why I did not put it on.

Q Is that why?

A Could be.

Q Was it? You're the one that filled it out. Was there a reason you didn't put it on there?

A As I told you, because the -- but the debtor was from out of the country.

Q Did you owe the creditor money? Did you [193] owe Lili Lin of China money?

A Of course. I lent from her $168,000.

Q So you owed her money?

A Yes.

Q And that money was a house payment because it was secured by a Deed of Trust on your house; correct?

A Yes.

Q And you didn't list it here because it was money that was owed out of the country. Is that the reason you didn't list it?

A I don't remember what reasons I had at that time, but I believe that -- here (indicating).

Q Does it say anywhere on this form that you don't need to list debts to creditors outside the country?

A At that time, I did not believe that I needed to put it down, so I did not put it down.

Q Why did you believe that?

A I don't understand your question.

Q What did you base that belief on? Did you read a book? Did a lawyer tell you? Did you get some kind of advice from somebody? Did you dream about it? On what do you base this conclusion that you didn't have to list the debt?

* * * *

EXHIBIT 52: EXCERPT OF TRANSCRIPT OF DEPOSITION OF STEPHEN LAW

* * *

[225] Q According to this Declaration of Li Zhang, it says Yingyang Luo delivered him some money twice.

A Yes.

Q And that he then wired it to you?

A Yes.

Q To your bank account here?

A Correct.

Q It doesn't say in this Declaration that he wired it from Hong Kong that I can see.

A Well, probably he didn't say. But at that time, China would not permit any money wired out from China. If it was possible, then Lili Lin would have wired to me directly instead of through Hong Kong.

Q How did you get this Declaration back from Mr. Li Zhang signed?

A I remember maybe he mailed it to me or had somebody deliver it to me.

Q So you don't remember how you got it back?

A Pretty much that he mailed it back to me.

Q Do you recall in February 11, 2004, you were examined at a meeting of creditors in your bankruptcy case? Do you recall that?

A Of course, I don't remember. It's been four years and eight months ago.

Q Do you remember that it happened?

[226] A I remember it happened, yes.

MR. MANN: Let me mark as Exhibit 25 a transcript of the meeting of creditors on February 11, 2004.

(Trustee's Exhibit 25 was marked for identification by the Deposition Officer and is attached hereto.)

Appendix W

MR. MANN: Directing your attention, Mr. Law, to the fourth page.

Q I didn't ask you a question yet, Mr. Law.

A You're asking me to read it. I want to know -- this is a transcript. You say this is a transcript; right?

Q Yes.

A I want to know who prepared this transcript, who wrote it. Was it from the court reporter or you typed it on your own?

Q Looking where it says, "How much money did you receive in 1999 from either Lili Lin or Lin Mortgage Associates?" Do you see that?

A Where?

Q In the middle of the page. I asked you to look at page 4, and you didn't do that because you were too busy arguing with me. So please look at page 4.

[227] A It doesn't show any page numbers.

Q Page 1 is the first page. Turn to the first page, please. That is page 1. Turn that page.

A (Deponent complies.)

Q That is page 2. Turn that page.

A (Deponent complies.)

Q That is page 3. Turn that page.

A (Deponent complies.)

Q That is page 4. Stay there.

A You don't have a page number there. You talk to me like that. I don't want to answer these questions. This is not a transcript. You typed it out. How could I know who said that? There is no way that I can remember what I said. This happened 4 1/2 years ago. Is this a certified transcript from the court?

Q Mr. Law, directing your attention on page 4 to the middle of the page. Do you see where it says, "How much money did you receive in 1999 from Lili Lin or Lin Mortgage Associates"?

A This is not a court transcript. I don't know how you got this. Whether I said that or not, I don't know. How can I answer your question?

Q Do you see where it says in the middle of that page, "How much money did you receive in 1999 [228] from either Lili Lin or Lin Mortgage Associates"?

A You want to ask me, you file a motion for the court to compel me to answer to say that whether this is a true copy of a transcript from the court or are you making up what you know?

Appendix W

Q Are you going to answer my questions, or are you going to leave?

A I don't want to answer these questions. First of all, you have to ask me the questions. Is this is a court transcript? This is 4 1/2 years ago. It doesn't have any indication as to the court transcript. It's not from the court's reporter. Now you say I said it. I did not say it. How can you ask me to answer a question like this? Now you have to ask me a reasonable question. You cannot just go anywhere to get the information to ask me to answer those questions.

Q Are you refusing to answer my question?

A I refuse to answer questions regarding this document. You have to go to the court to prove that it's actually the document from the court, if that was actually what I said in the court, then I will answer your question. But this document is not from the court. There is no way that I can remember four or five years ago whether I said certain things [229] or you said certain things or other people said anything or not; it was impossible. You have to make good faith to show. That's the two things before I answer all these questions.

Q Are you refusing to answer my questions regarding --

A I refuse to answer questions regarding this document. You go to make sure that this is actually the

court transcript before I answer your question.

MR. MANN: Then we'll suspend the deposition until such time as I can get a court order to continue the deposition.

(Deposition suspended at 4:55 p.m.)

* * * *

EXHIBIT 54: EXCERPT OF TRANSCRIPT OF DEPOSITION OF STEPHEN LAW

* * *

[135] A Yes. Connie Chang's Declaration to show the support for the motion. These were all things that Connie Chang was helping Lili Lin.

Q Directing your attention to Exhibit C, which is something from TransUnion; it's a personal credit report for you.

Do you see that?

A Yes.

Q Do you know how Lili Lin of China got this document?

A Either I had mailed it to her or sent it by e-mail or talked with her, but I don't know the specific details.

This document has been already over three years. I don't remember the specifics.

MR. MANN: I'm handing the court reporter a document entitled "Notice of Motion and Motion to Disqualify" and ask that it be marked as Exhibit 17 to this deposition.

(Trustee's Exhibit 17 was marked for identification by the Deposition Officer and is attached hereto.)

MR. MANN: Mr. Law, you've been handed a document marked as Exhibit 17.

Q Do you recognize this document?

A Yes.

[136] Q And did you prepare this document?

A Yes, I believe so.

Q And did Lili Lin sign this document on page 2?

A Yes.

Q And is this the same answer you've given before, that you don't remember whether you sent it to her by e-mail or by fax.

Is that right?

A Yes.

Q And you're also going to tell me, I assume, that you have no records of any kind that would show that you sent it by e-mail or sent it by fax.

Is that correct?

A This document is over 2 1/2 years old. There is no way I can remember how it was sent.

Q I didn't ask you that question. I'm asking you, do you have any records, any documents, e-mails, fax receipts, fax transmission reports, anything like that, that would show how this document was sent to Lili Lin of China and sent back to you by Lili Lin of China? Do you have any such documents?

A I don't know.

[137] Q You don't know if you have any?

A I don't know whether I have any.

Q Did you look to see if you had any documents that would show whether this was transmitted by e-mail or by fax?

A I've already said this repeatedly, that if this was sent by e-mail, if there was an attachment, I would just download the attachment and delete the e-mail. And there was no reason to keep those e-mails because it's already been over two years.

Q So your answer is that you don't have any documents that would show and confirm that it was sent by e-mail?

A Right now, there is no way of knowing.

Q Did you look to see if you had any documents and e-mails? Did you look in your computer or in your files to see if there were any e-mails?

A I've already said that these documents came through the e-mail. I would just download and print these e-mails and then I would delete the e-mails.

Q Did you look in your computer for e-mails from Lili Lin to you or from you to Lili Lin, and did you find any other than the ones you've already produced? Did you look and the only ones you found [138] are the ones you produced and there is nothing else in there, no other e-mails that you've saved?

Is that correct?

A Yes, I've checked.

Q And all you found are the ones you produced; correct?

A Yes.

Q And you produced no fax transmissions or cover sheets or receipts or anything. So am I correct in saying that when you looked through your files, you found no

records of any fax transmissions that haven't already been produced?

A On the Exhibit 3, Exhibit Q, there is a fax.

Q I'm saying other than what you produced. You looked and these are the only faxes you found.

Is that correct?

A Yes. What I meant was, you were saying that there were no other fax documents. I'm just showing that there were some fax documents. But other than the ones that I produced, there are no other faxes. But, of course, no one can be 100 percent sure about this.

Q So far then, as the record stands right now with respect to all these various pleadings [139] we've looked at today where you have a signature by Lili Lin, there are a couple that we've looked at that have a fax transmission at the top.

Do you recall those?

A The one or two copies of the fax were with Lili Lin's signature.

Q Right.

And the documents that have her signature where it's not a fax transmission and you've told me that she either faxed or e-mailed you her signature, the only

evidence that that occurred is your testimony. There is no document that supports that; it's just your testimony saying that she must have e-mailed it or must have faxed it. That's the only evidence you have; correct?

A I'm actually not sure whether for faxes that the document will have the faxed information printed by the fax machine or whether it actually would be a blank sheet with only the fax information on it. So I'm not sure about which is the way with regards to faxes.

Q Mr. Law, I didn't ask you about how fax machines work. What I asked you was whether you had any other evidence other than your testimony here today that you faxed or e-mailed these documents [140] to Lili Lin or whether she faxed or e-mailed the documents back to you. You have no documents that support that. The only evidence that it happened that way is your testimony.

Is that correct?

A Let me get it straight. What you meant was that other than those documents that had fax machine printed on the top sent by Lili Lin, the rest of them that were without any of this fax information or e-mail information, those are the ones that will be my testimony saying that those were received or sent either through fax or through e-mail?

Q Yes, exactly.

A Yes, but then I would not be able to confirm to be sure.

Q Confirm or be sure what?

A To confirm whether they came through the fax or through e-mail.

Q I understand. You don't know how you got them and you have no document that's going to show me how you got them.

A Yes.

MR. MANN: I'm handing the court reporter a document entitled "Answer to Complaint for Declaratory Relief" and ask that it be marked as . . . .

* * * *

RECORD
AND
BRIEFS

Supreme Court, U.S.
FILED
AUG 27 2013
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No. 12-5196

IN THE

Supreme Court of the United States

STEPHEN LAW,

Petitioner,

v.

ALFRED H. SIEGEL, CHAPTER 7 TRUSTEE,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JULY 5, 2012
CERTIORARI GRANTED JUNE 17, 2013

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Form B1 (Official Form 1) - (Rev. 11/02) 2002 USBC, Central District of California

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

Voluntary Petition

Name of Debtor (If individual, enter Last, First, Middle):	Name of Joint Debtor (Spouse) (Last, First, Middle):
Law, Stephen	None
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):	**All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):**
Stephen Luo, Zhanjun Luo	N/A
Soc. Sec./Tax I.D. No. (If more than one, state all):	**Soc. Sec./Tax I.D. No. (If more than one, state all):**
5513	N/A
Street Address of Debtor (No. & Street, City, State, & Zip Code):	**Street Address of Joint Debtor (No. & Street, City, State, & Zip Code):**
16150 La Monde St. Hacienda Heights, CA 91745-4230	N/A
County of Residence or of the Principal Place of Business: Los Angeles	**County of Residence or of the Principal Place of Business:** N/A
Mailing Address of Debtor (If different from street address):	**Mailing Address of Joint Debtor (If different from street address):**

Location of Principal Assets of Business Debtor (If different from street address above):

N/A

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

- ☒ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- ☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.
- ☐ This petition is being filed by a corporation or partnership under chapter 11 and the debtor acknowledges that a Venue Disclosure Form is required to be filed by General Order 97-02.

Type of Debtor (Check all boxes that apply)

- ☒ Individual(s)
- ☐ Corporation
- ☐ Partnership
- ☐ Other _____
- ☐ Railroad
- ☐ Stockbroker
- ☐ Commodity Broker
- ☐ Clearing Bank

Chapter or Section of Bankruptcy Code Under Which the Petition Is Filed (Check one box)

- ☒ Chapter 7
- ☐ Chapter 9
- ☐ Sec. 304 - Case ancillary to foreign proceeding
- ☐ Chapter 11
- ☐ Chapter 12
- ☐ Chapter 13

Nature of Debts (Check one box)

- ☒ Consumer/Non-Business
- ☐ Business

Filing Fee (Check one box)

- ☒ Full Filing Fee attached
- ☐ Filing Fee to be paid in installments (Applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

Chapter 11 Small Business (Check all boxes that apply)

- ☐ Debtor is a small business as defined in 11 U.S.C. § 101.
- ☐ Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e). (Optional)

Statistical/Administrative Information (Estimates only)

- ☐ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☒ Debtor estimates that, after any exempt property is excluded and administrative expenses paid there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors

1-15	16-49	50-99	100-199	200-999	1000-over
☒	☐	☐	☐	☐	☐

Estimated Assets

$0 - $50,000	$50,001 - $100,000	$100,001 - $500,000	$500,001 - $1 million	$1,000,001 - $10 million	$10,000,001 - $50 million	$50,000,001 - $100 million	More than $100 million
☐	☒	☐	☐	☐	☐	☐	☐

Estimated Debts

$0 - $50,000	$50,001 - $100,000	$100,001 - $500,000	$500,001 - $1 million	$1,000,001 - $10 million	$10,000,001 - $50 million	$50,000,001 - $100 million	More than $100 million
☐	☐	☒	☐	☐	☐	☐	☐

01/05/2004 **FILED** 12:17
LA04-10052TD
DEBTOR:
LAW, STEPHEN
JUDGE: HON. T. Donovan - 552
TRUSTEE: BT35 CH: 07 (COMPLETE)
341A MTG: 02/11/2004 08:00 F08
ADR: 725 S. Figueroa St., #101 L.A.

CLERK, U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIF. ID: 733
RECEIPT NO: LA-000069 $ 209.00

Voluntary Petition
(This page must be completed and filed in every case.)

Name of Debtor(s): Law, Stephen

[redacted]

Location Where Filed: N/A	Case Number:	Date Filed:

[redacted]

Name of Debtor: none	Case Number:	Date Filed:
District:	Relationship:	Judge:

[redacted]

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct. [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X Stephen Law
Signature of Debtor

X
Signature of Joint Debtor

626-368-2684
Telephone Number (If not represented by attorney)

1/4/2004
Date

Signature of Attorney

X
Signature of Attorney for Debtor(s)

Printed Name of Attorney for Debtor(s)

Firm Name

Address

Telephone Number

Date Bar Number

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X _____ _____
Signature of Attorney for Debtor(s) Date

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.
☒ No

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Complete Social Security Number (Required by 11 U.S.C. § 110(c).)

Address

Names and complete Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X
Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

Form B6 Continued - (6/90) 1990 USBC, Central District of California

UNITED STATES BANKRUPTCY COURT
Central District of California

In re	Case No.:
Law, Stephen Debtor.	(If known)

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts from Schedules D, E, and F to determine the total amount of the debtor's liabilities.

				AMOUNTS SCHEDULED		
	NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A-	Real Property	Y	1	$363,348.00		
B-	Personal Property	Y	3	$ 4,146.29		
C-	Property Claimed as Exempt	Y	1			
D-	Creditors Holding Secured Claims	Y	2		$443,342.80	
E-	Creditors Holding Unsecured Priority Claims	Y	1		$ 0.00	
F-	Creditors Holding Unsecured Nonpriority Claims	Y	1		$ 6,390.00	
G-	Executory Contracts and Unexpired Leases	Y	1			
H-	Codebtors	Y	1			
I-	Current Income of Individual Debtor(s)	Y	1			$2,985.00
J-	Current Expenditures of Individual Debtor(s)	Y	1			$4,098.00
	Total Number of Sheets of ALL Schedules ➤		13			
	Total Assets ➤			$367,494.29		
	Total Liabilities ➤				$449,732.80	

Form B6A - (6/90) 2001 USBC, Central District of California

In re	Case No.:
Law, Stephen Debtor	(If known)

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
Debtor's Principal Residence 16150 La Monde Street Hacienda Hts, CA 91745			$363,348.00	$443,342.80
		Total ➤	$ 363,348.00	

(Report also on Summary of Schedules)

Form B6B - (06/97) 1998 EDEC, Central District of California

In re Law, Stephen Debtor.	Case No.: (If known)

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife or both own the property by placing an "H," "W," "J" or "C" in the column labeled "Husband, Wife, Joint or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property."

	TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1.	Cash on hand.				25.00
2.	Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Checking Account Citibank #724-4243569 In debtor possession		24.00
			Union Bank of Calif #2011052103		30.00
3.	Security deposits with public utilities, telephone companies, landlords, and others.	X			
4.	Household goods and furnishings, including audio, video, and computer equipment.		Audio, video, computer Household & Furnishing In debtor possession		1,500.00
5.	Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6.	Wearing apparel.		Wearing apparel In debtor possession		380.00
7.	Furs and jewelry.		Personal Jewelry		285.00
8.	Firearms and sports, photographic, and other hobby equipment.	X			
9.	Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10.	Annuities. Itemize and name each issuer.	X			

Form B6B - Continued (10/89) 1990 USBC, Central District of California

In re Law, Stephen Debtor.	Case No.: (If known)

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

	TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
11.	Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.	X			
12.	Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
13.	Interests in partnerships or joint ventures. Itemize.	X			
14.	Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
15.	Accounts receivable.	X			
16.	Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
17.	Other liquidated debts owing debtor including tax refunds. Give particulars.		Judgment against Shong-Ching Tong LASC case #GC009783 USDC Central Cali #CV96-4078-KP		279.55 214.44
18.	Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property. (Form B6A)	X	Judgment against Yei-Rwei Tong LASC case #GC009783		1,158.30
19.	Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
20.	Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
21.	Patents, copyrights, and other intellectual property. Give particulars.	X			
22.	Licenses, franchises, and other general intangibles. Give particulars.		Insurance agent License Auto Sales Licenses		

Form B6B - Continued (10/89) (c) 1996 USBC, Central District of California

In re	Case No.:
Law, Stephen Debtor.	(If known)

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

	TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
23	Automobiles, trucks, trailers, and other vehicles and accessories.		Lease Toyota Camry In debtor's possession		None
24.	Boats, motors, and accessories.				
25.	Aircraft and accessories.				
26.	Office equipment, furnishings, and supplies.		ComputerPIII 550 In debtor's possession		250.00
27.	Machinery, fixtures, equipment and supplies used in business.				
28.	Inventory.				
29.	Animals.				
30.	Crops - growing or harvested. Give particulars.				
31.	Farming equipment and implements.				
32.	Farm supplies, chemicals, and feed.				
33.	Other personal property of any kind not already listed. Itemize.				

____ continuation sheets attached

$ 4,146.29

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

Form B6C - (6/90) 1990 USBC, Central District of California

In re Law, Stephen Debtor.	Case No.: (If known)

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemption to which debtor is entitled under

(Check one box)

☐ 11 U.S.C. § 522(b)(1) Exemptions provided in 11 U.S.C. § 522(d). Note: These exemptions are available only in certain states.

☐ 11 U.S.C. § 522(b)(2) Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY, WITHOUT DEDUCTING EXEMPTIONS
Debtor's Principal Residence	CCP 704.730	$75,000.00	$363,348.00
Computer Equipment Pentium 3	CCP 704.060	250.00	250.00
Household Furnishing	CCP 704.020	1,500.00	1,500.00
Personal Jewelry	CCP 704.040	285.00	285.00
Wearing Apparel	CCP. 704.020(a)	380.00	380.00

Form B6D - (Rev. 12/03) 2003 USBC, Central District of California

In re Law, Stephen Debtor	Case No.: (If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding claims secured by property of the debtor as of the date of filing of the petition. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Last four digits of ACCOUNT NO. 0778 Washing Mutual Bank PO Box 60800 Los Angeles, CA 90060			9/27/88 1st Mortgage 16150 La Monde St Hacienda Hts, CA91745 Value $ 363,348.00		X		147,156.52 Collateral Value: 147,156.52	
Last four digits of ACCOUNT NO. 2499 LIN'S Mortgage & Associates 114 Shan Xan Jui Rd Guangzhou, PR China			6/24/99 2nd Mortgage 16150 La Monde St Hacienda Hts,CA91745 Value $ 363,348.00		X		156,929.04 Collateral Value: 156,929.04	
Last four digits of ACCOUNT NO. Cau-Min Li 12198 Riparian Way Moreno Vally, CA 92557			1/6/00 LASC RC025668 Abstract Judgment 16150 La Monde St Hacienda Hts, CA91745 Value $ 363,348.00		X		131,821.74 Collateral Value: unknown	
Last four digits of ACCOUNT NO. Andrew Schucker Administration of Estate Robert Schucker PO Box 421502 San Diego, CA 92142			7/31/94 USBC LA95-04487LZ Abstract Judgment 16150 La Monde St Hacienda Hts, CA 91745 Value $ 363,348.00		X		3,750.00 Collateral Value: unknown	
						Subtotal (Total of this page) ➤	$439,657.30	
____ Continuation Sheets attached						Total (Use only last page) ➤	$439,657.30	

(Report total also on Summary of Schedules)

Form B6D - Continued (Rev. 12/03) 2003 USBC, Central District of California

In re Law, Stephen Debtor.	Case No.: (If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Last four digits of ACCOUNT NO. Cau-Min Li 12198 Riparian Way Moreno Vally, CA 92557			7/31/94 Abstract Judgment 16150 La Monde St. Hacienda Hts, CA 91745 Value $ 363,345.00			X	$3,685.50 Collateral Value: unknown	
Last four digits of ACCOUNT NO. Michael Goudie US Judgment Enforcement Agt PO Box 77397 Corona, CA 92877			Assignee of Record for Cau-Min Li Abstract Judgment LASC case KC025668 Value $ 363,345.00				Notice Only	
Last four digits of ACCOUNT NO. Jerry La Cues Attorney for Plaintiff Successor in Interest 12606 Central Ave Chino, CA 91710			Abstract Judgment LASC case KC025668 Value $ 363,345.00				Notice Only	
Last four digits of ACCOUNT NO.			Value $					
Last four digits of ACCOUNT NO.			Value $					

Subtotal (Total of this page) ➤ $ 3,685.50

Sheet no. _____ of _____ Continuation Sheets attached to Schedule of Creditors Holding Secured Claims

Total (Use only on last page) ➤ $443,342.80

(Report total also on Summary of Schedules)

Form B6E - (Rev. 4/91) 2001 CSBC, Central District of California

In re Law, Stephen Debtor.	Case No.: (If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name and mailing address, including zip code, and account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H," "W," "J" or "C" in the column labeled "Husband, Wife, Joint or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated place an "X" in the column labeled "Unliquidated." If the claim is disputed, place and "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled, "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

☒ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Extensions of credit in an involuntary case:** Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(2).

☐ **Wages, salaries, and commissions:** Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to $4,650* per person, earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(3).

☐ **Contributions to employee benefit plans:** Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Certain farmers and fishermen:** Claims of certain farmers and fishermen, up to $4,650* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(5).

☐ **Deposits by individuals:** Claims of individuals up to $2,100* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(6).

☐ **Alimony, Maintenance, or Support:** Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(7).

☐ **Taxes and certain other debts owed to governmental units:** Taxes, customs duties, and penalties owing to federal, state, and local government units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to maintain the capital of an insured depository institution:** Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507 (a)(9).

* Amounts are subject to adjustment on April 1, 2004, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

____ continuation sheets attached

Form B6F (Official Form 6F) - (Rev. 12/03) 2003 USBC, Central District of California

In re Law, Stephen Debtor.	Case No.: (If known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding unsecured nonpriority claims to report on this Schedule F.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Last four digits of ACCOUNT NO. 6601 Citgo Credit Card Processing Ctr Des Moines, IA 50362			5/28/03 Credit Card			X	$ 190.00
Last four digits of ACCOUNT NO. 3305 GM Card member Services P O Box 60119 City of Industry, CA91716			8/19/03 Credit Card			X	$2,310.00
Last four digits of ACCOUNT NO. 2385 Providian National Bank P O Box 660548 Dallas, TX 75266-0548			4/2/02 Credit Card			X	$3,980.00
Last four digits of ACCOUNT NO.							
					Subtotal >		$ 6,390.00
_____ Continuation Sheets attached					Total >		$ 6,390.00

(Report total also on Summary of Schedules)

Form B6G - (1/89) 1991 EBC, Central District of California

In re Law, Stephen Debtor.	Case No.: (If known)

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests.

State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease.

Provide the names and complete mailing addresses of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

☐ Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT

Form B6H - (6/90) 1990 USBC, Central District of California

In re Law, Stephen Debtor.	Case No.: (If known)

SCHEDULE H - CODEBTORS

Provide the information required concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. In community property states, a married debtor not filing a joint case should report the name and address of the non-debtor spouse on this schedule. Include all names used by the nondebtor spouse during the six years immediately preceding the commencement of this case.

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR

Form B6I - (Rev. 12/03) 2003 EBEC, Central District of California

In re Law, Stephen Debtor.	Case No.: (If known)

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status: Unmarried	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP Parent & Son	AGE 85 & 24
Employment:	DEBTOR	SPOUSE
Occupation	Auto Sales	
Name of Employer	Downtown L A Motors	
How Long Employed	9 months	
Address of Employer	1801 S. Figueroa St. L.A. CA 90015	

Income: (Estimate of average monthly income)	DEBTOR	SPOUSE
Current monthly gross wages, salary, and commissions (prorate if not paid monthly)	$ 3,732.00	$
Estimated monthly overtime	$ 0.00	$
SUB TOTAL	$ 3,732.00	$
LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and Social Security	$ 1,148.00	$
b. Insurance	$ 49.00	$
c. Union dues	$ 0.00	$
d. Other (specify)	$	$
SUBTOTAL OF PAYROLL DEDUCTIONS	$ 1,197.00	$
TOTAL NET MONTHLY TAKE HOME PAY	$ 2,535.00	$
Regular income from operation of business or profession or farm (attach detailed statement)	$	$
Income from real property	$ 450.00	$
Interest and dividends	$	$
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above.	$	$
Social security or other government assistance (Specify)	$	$
Pension or retirement income	$	$
Other monthly income	$	$
(Specify)	$	$
	$	$
TOTAL MONTHLY INCOME	$ 2,985.00	$
TOTAL COMBINED MONTHLY INCOME $ 2,985.00	(Report also on Summary of Schedules)	

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

Form B6J - (Rev. 12/03) 2003 USBC, Central District of California

In re Lav, Stephen Debtor.	Case No.: (If known)

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

Rent or home mortgage payment (include lot rented for mobile home)	$ 2,731.00
Are real estate taxes included? Yes ____ No X	
Is property insurance included? Yes ____ No X	
Utilities: Electricity and heating fuel	$ 101.00
Water and sewer	$ 35.00
Telephone	$ 65.00
Other ____	$
Home Maintenance (Repairs and Upkeep)	$ 70.00
Food	$ 140.00
Clothing	$ 55.00
Laundry and dry cleaning	$ 20.00
Medical and dental expenses	$ 70.00
Transportation (not including car payments)	$ 95.00
Recreation, clubs and entertainment, newspapers, magazines, etc.	$ 25.00
Charitable contributions	$ 0.00
Insurance (not deducted from wages or included in home mortgage payments):	
Homeowner's or renter's	$ 36.00
Life	$ 0.00
Health	$ 0.00
Auto	$ 72.00
Other ____	$
Taxes (not deducted from wages or included in home mortgage payments) (specify) Property taxes	$ 332.00
Installment payments (in chapter 12 and 13 cases, do not list payments to be included in the plan)	
Auto Lease a car	$ 251.00
Other ____	$
Other ____	$
Alimony, maintenance, and support paid to others	$
Payments for support of additional dependents not living at your home	$
Regular expenses from operation of business, profession, or farm (attach detailed statement)	$
Other ____	$
TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)	$ 4,098.00

[FOR CHAPTER 12 AND 13 DEBTORS ONLY]

Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income	$
B. Total projected monthly expenses	$
C. Excess income (A minus B)	$
D. Total amount to be paid into plan each ____ (interval)	

Form B6 - Continued - (Rev. 12/03) 2003 USBC, Central District of California

In re Law, Stephen Debtor.	Case No.: (If known)

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 15 sheets, and that they are true and correct to the best of my knowledge, information, and belief. *(Total shown on summary page plus 1.)*

Date 1/2/2004 Signature _____ Debtor

Date _____ Signature _____ *(Joint Debtor, if any)*

[If joint case, both spouses must sign.]

CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

_____ Printed or Typed Name of Bankruptcy Petition Preparer

_____ Complete Social Security Number (Required by 11 U.S.C. § 110(c).)

_____

_____ Address

Name and complete Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

_____ *Signature of Bankruptcy Petition Preparer*

_____ Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the _____ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the _____ [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____ sheets, and that they are true and correct to the best of my knowledge, information, and belief. *(Total shown on summary page plus 1.)*

Date _____ Signature _____

_____ *[Print or type name of individual signing on behalf of debtor.]*

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement or concealing property: Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

CITRUS JUDICIAL DISTRICT (19430)
1427 WEST COVINA PKWY., WEST COVINA, CA.

SMALL CLAIMS CASE NO: CIT 00J02121

- NOTICE TO DEFENDANT - YOU ARE BEING SUED BY PLAINTIFF

To protect your rights, you must appear in this court on the trial date shown below. You may lose the case if you do not appear. The court may award the plaintiff the amount of the claim and the costs. Your wages, money, and property may be taken without further warning from the court.

- AVISO AL DEMANDADO - A USTED LO ESTAN DEMANDANDO

Para proteger sus derechos, usted debe presentarse ante esta corte en la fecha del juicio indicada abajo. Si no se presenta, puede perder el caso. La corte puede decidir en favor del demandante por la cantidad del reclamo y las costas. A usted le pueden quitar su salario, su dinero, y otras cosas de su propiedad, sin aviso adicional por parte de esta corte.

PLAINTIFF/DEMANDANTE	DEFENDANT/DEMANDADO
LAW, STEPHEN	LIN, LILI
18150 E. LA MONDE ST. HACIENDA HGHTS, CA 91748	18425 GRIDLEY RD. CERRITOS, CA 90701

Fict. Bus. Name Stmt. No. Expires:

PLAINTIFF'S CLAIM

1. [X] a. Defendant owes me the sum of $ 4800.00 , not including court costs, because (describe claim and date):
   DAMAGES RESULTS FROM BREACHED OF AGREEMENTS. Date: 10 /01 /1999
   [ ] b. I have had an arbitration of an attorney-client fee dispute. *(Attach Attorney-Client fee Disputs form (see form SC-1*
2. [ ] This claim is against a government agency, and I filed a claim with the agency. My claim was denied by the agency, or the agency did not act on my claim before the legal deadline. *(See form SC-150.)*
3. [X] a. I have asked defendant to pay this money,but it has not been paid.
   [ ] b. I have NOT asked defendant to pay this money because (explain):
4. This court is the proper court for the trial because [C] *(In the box at the left, insert one of the letters from the list called "Venue Table" on the back of this sheet. If you select D, E, or F, specify additional facts in this space):*
5. I have [ ] have not [X] filed more than one other small claims action anywhere in California during this calendar year in which the amount demanded is more than $2,500.
6. I have [ ] have not [X] filed more than 12 claims in this court, including this claim, during the previous 12 months.
7. I understand that
   a. I may talk to an attorney about this claim, but I cannot be represented by an attorney at the trial in the small claims court.
   b. I must appear at the time and place of trial and bring all witnesses, books, receipts, and other papers or things to prove my case.
   c. I have no right of appeal on my claim, but I may appeal a claim filed by the defendant in this case.
   d. If I cannot afford to pay the fees for filing or service by a sheriff, marshal, or constable, I may ask that the fees be waived.
8. I have received and read the sheet explaining some important rights of plaintiffs in the small claims court.
9. No defendant is in the military service [ ] except (name):

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATE	TYPE OR PRINT PLAINTIFF'S NAME	SIGNATURE OF PLAINTIFF
06/21/2000	STEPHEN LAW	=>> SIGNATURE ON FILE

ORDER TO DEFENDANT

You must appear in this court on the trial date and time SHOWN BELOW if you do not agree with the plaintiff's claim. Bring all witnesses, books, receipts, and other papers or things with you to support your case.

HEARING DATE FECHA DEL JUICIO	DATE	DAY	TIME	DIVISION	LOCATION
	07/14/2000	*FRI*	*09:00 AM*	*002*	

Filed on (date): 06/21/2000 JOHN A. CLARKE, Court Administrator/Clerk
By ARTURO QUINTERO , Deputy

THE COURT PROVIDES SMALL CLAIMS ADVISOR SERVICES FREE OF CHARGE. READ THE INFORMATION ON THE REVERSE.

SC-100 (Rev. 1-98) PLAINTIFF'S CLAIM AND ORDER TO DEFENDANT (Small Claims)

Exhibit A

CITRUS JUDICIAL DISTRICT (19430) SMALL CLAIMS CASE NO. CIVSC021424
1427 WEST COVINA PKWY., WEST COVINA, CA 91790

- NOTICE TO ALL PLAINTIFFS AND DEFENDANTS -

Your small claims case has been decided. If you lost the case, and the court ordered you to pay money, your wages, money, and property may be taken without further warning from the court. Read the following pages for important information about your rights.

- AVISO A TODOS LOS DEMANDANTES Y DEMANDADOS -

Su caso ha sido resuelto por la corte para reclamos judiciales menores. Si la corte ha decidido en su contra y ha ordenado que usted pague dinero, le pueden quitar su salario, su dinero, y otras cosas de su propiedad, sin aviso adicional por parte de la corte. Lee el reverso de este formulario para obtener informacion de importancia acerca de sus derechos.

PLAINTIFF/DEMANDANTE	DEFENDANT/DEMANDADO
LAW, STEPHEN	LIN, LILI
16150 E. LA MONDE ST. HACIENDA HGHTS, CA 91745	18425 GRIDLEY RD. CERRITOS, CA 90701

JUDGMENT AND NOTICE OF ENTRY OF JUDGMENT

JUDGMENT WAS ENTERED AS STATED BELOW ON (DATE): *07/14/2000*

Defendant *(name, if more than one)*:
LIN, LILI

shall pay plaintiff (name, if more than one):
LAW, STEPHEN

$ 800.00 principal and $ 48.00 costs on plaintiff's claim.

Enforcement of the judgment is automatically postponed for 30 days or, if an appeal is filed, until the appeal is decided.
EXHIBITS, IF ANY, WILL BE DESTROYED AT THE END OF 60 DAYS FROM EXPIRATION OF APPEAL TIME.

CLERKS CERTIFICATE OF MAILING - I certify that I am not a party to this action. This NOTICE OF ENTRY OF JUDGMENT was mailed first class, postage prepaid, in a sealed envelope to the parties at the addresses shown above. The mailing and this certification occurred at the place and on the date shown below.

Place of mailing: WEST COVINA, CALIFORNIA.
Date of mailing: 07/14/2000

JOHN A. CLARKE, Court Administrator/Clerk
By DONNA L. STUEBGEN , Deputy

- The county provides small claims advisor services free of charge. -

SC-130JC (Rev. 1-00) JUDGMENT AND NOTICE OF ENTRY OF JUDGMENT

ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT

To the Clerk of the Court: I am the judgment creditor of record. I agree that the judgment in this action has been paid in full or otherwise satisfied.

Dated: ___ / ___ / ____

(Type or print name) *(Signature)*

Exhibit B

活期存款 A/C NO 4762801-0188-051248-7

户名 IN A/C WITH 林丽丽

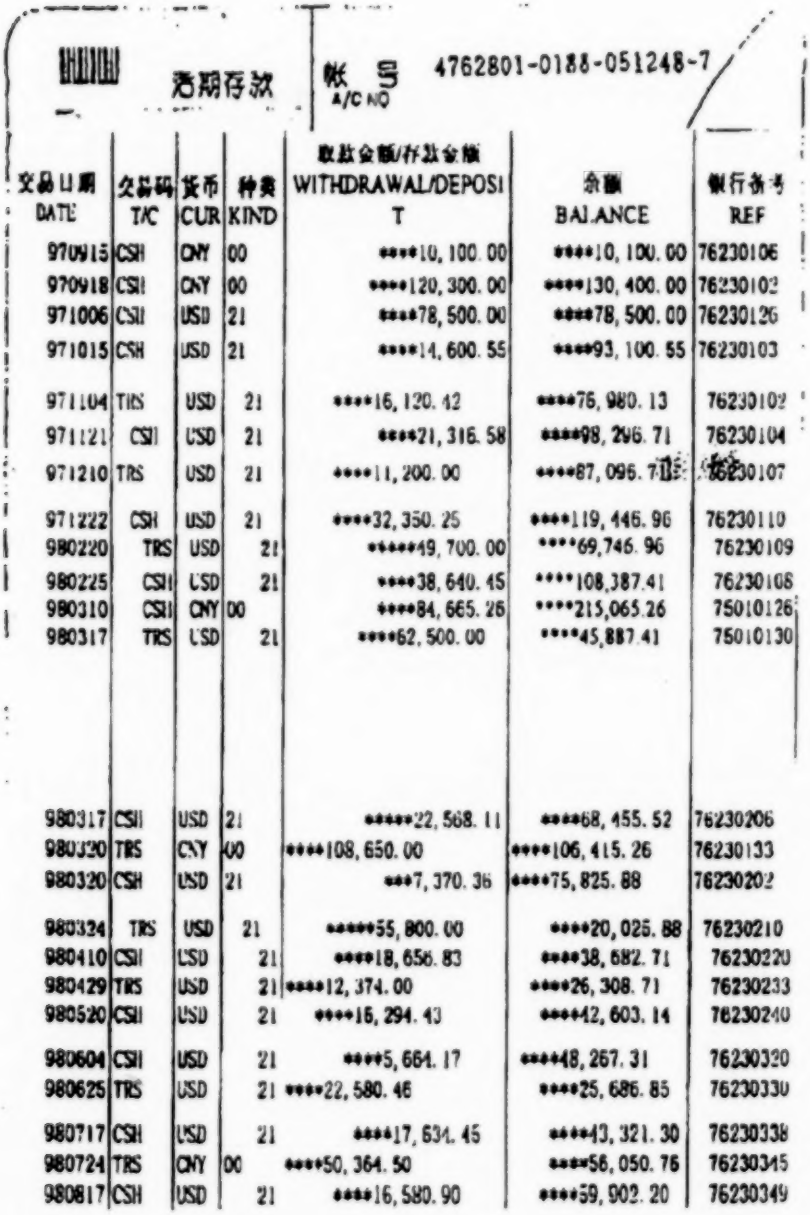
中国银行

凭密码支取 BANK OF CHINA

1996/09/19

签发日期 ISSUE DATE

中国银行 台湾支行 TAIWAN SUBBRANCH 业务公章 BANK OF CHINA



活期存款 帐号 A/C NO 4762801-0188-051248-7

交易日期 DATE	交易码 T/C	货币 CUR	种类 KIND	取款金额/存款金额 WITHDRAWAL/DEPOSIT	余额 BALANCE	银行条号 REF
970915	CSH	CNY	00	****10,100.00	****10,100.00	76230106
970918	CSH	CNY	00	****120,300.00	****130,400.00	76230102
971006	CSH	USD	21	****78,500.00	****78,500.00	76230126
971015	CSH	USD	21	****14,600.55	****93,100.55	76230103
971104	TRS	USD	21	****16,120.42	****76,980.13	76230102
971121	CSH	USD	21	****21,316.58	****98,296.71	76230104
971210	TRS	USD	21	****11,200.00	****87,096.71	76230107
971222	CSH	USD	21	****32,350.25	****119,446.96	76230110
980220	TRS	USD	21	*****49,700.00	****69,746.96	76230109
980225	CSH	USD	21	****38,640.45	****108,387.41	76230108
980310	CSH	CNY	00	****84,665.26	****215,065.26	75010126
980317	TRS	USD	21	****62,500.00	****45,887.41	75010130
980317	CSH	USD	21	*****22,568.11	****68,455.52	76230206
980320	TRS	CNY	00	****108,650.00	****106,415.26	76230133
980320	CSH	USD	21	***7,370.36	****75,825.88	76230202
980324	TRS	USD	21	*****55,800.00	****20,025.88	76230210
980410	CSH	USD	21	****18,656.83	****38,682.71	76230220
980429	TRS	USD	21	****12,374.00	****26,308.71	76230233
980520	CSH	USD	21	****16,294.43	****42,603.14	76230240
980604	CSH	USD	21	****5,664.17	****48,267.31	76230320
980625	TRS	USD	21	****22,580.46	****25,686.85	76230330
980717	CSH	USD	21	****17,634.45	****43,321.30	76230338
980724	TRS	CNY	00	****50,364.50	****56,050.76	76230345
980817	CSH	USD	21	****16,580.90	****59,902.20	76230349

CALIFED
CALIFORNIA FEDERAL BANK

Account Statement
March 1, 1998 - March 31, 1998

17801 Colima Road
City of Industry, CA 91748

Account Number 724-004809-5
Questions? Call 1-800-843-2265 Page 1 of 1

724 STEPHEN LAH ATF
16150 LA MONDE ST
HACIENDA HEIGHTS CA 91745-4230

Regular Savings 724-004809-5

Previous balance	$ 44,604.66
Deposits and credits	+ 66,563.11
Interest paid this period	+ 68.69
Withdrawals and debits	- 91,010.00
New balance	$ 20,226.46

Deposits and Credits

Trans. Date	Date Posted	Description	Amount
03/09	03/09	Deposit	2,755.78
03/18	03/18	Deposit	1,392.33
03/18	03/18	Deposit	62,415.00
Total			$ 66,563.11

Interest Information

Trans. Date	Date Posted	Description	Amount
03/31	03/31	Interest Paid	68.69

Begin Date	Interest Rate
03/01	2.000%

Annual Percentage Yield Earned	Interest Bearing Days	Interest Earned This Period
2.02%	31	$ 68.69

Average Daily Balance	Interest Paid YTD	Interest Paid This Period
$ 40,513.03	$ 110.15	$ 68.69

Interest paid on this account for 1997 was $ 270.21

Debits and Withdrawals

Other Transactions and Service Fees

Trans. Date	Date Posted	Description		Amount
03/05	03/05	ARU Transfer Debit	AXT72440768471	10,000.00
03/11	03/11	ARU Transfer Debit	AXT72440768471	6,000.00
03/18	03/18	Incoming Wire Tr Fee		10.00
03/19	03/19	Withdrawal		35,000.00
03/23	03/23	ARU Transfer Debit	AXT72440768471	40,000.00
Total				$ 91,010.00

CALFED
CALIFORNIA FEDERAL BANK

Account Statement
January 1, 1998 - February 28, 1998

17801 Colima Road
City of Industry, CA 91748

Account Number 724-004809-5
Questions? Call 1-800-843-2255 Page 1 of 2

724 STEPHEN LAW ATF
16150 LA MONDE ST
HACIENDA HEIGHTS CA 91745-4230

Regular Savings 724-004809-5

Previous balance	$ 6,575.58
Deposits and credits	+ 68,997.62
Interest paid this period	+ 41.46
Withdrawals and debits	- 31,010.00
New balance	$ 44,604.66

Deposits and Credits

Trans. Date	Posted	Description		Amount
01/07	01/07	Deposit		7,879.90
01/09	01/09	Deposit		9,705.00
01/21	01/21	Deposit		24.00
01/30	01/30	Automatic Transfer	Date Related Trfr From 7244076847	25.00
02/02	02/02	Deposit		1,220.09
02/10	02/10	Deposit		438.63
02/23	02/23	Deposit		49,680.00
02/27	02/27	Automatic Transfer	Date Related Trfr From 7244076847	25.00
Total				$ 68,997.62

Interest Information

Trans. Date	Posted	Description	Amount
01/15	01/15	Closing Interest	12.87
01/31	01/31	Interest Paid	9.50
02/28	02/28	Interest Paid	19.09

Begin Date	Interest Rate	Begin Date	Interest Rate
01/01	2.750%	01/15	2.000%

Annual Percentage Yield Earned	Interest Bearing Days	Interest Earned This Period
2.21%	59	$ 41.47

Average Daily Balance	Interest Paid YTD	Interest Paid This Period
$ 12,494.22	$ 41.46	$ 41.46

Interest paid on this account for 1997 was $ 270.21

Debits and Withdrawals

Other Transactions and Service Fees

Trans. Date	Posted	Description	Amount
01/12	01/12	Withdrawal	14,000.00
02/05	02/05	Withdrawal	11,000.00
02/23	02/23	Incoming Wire Tr Fee	10.00

收 據
RECEIPT FOR HOUSE PAYMENT

收到貸款人: 现金 USD$1822.00
RECEIVED FROM: LUO, ZHANJUN
貸款房址: 18180 LA MONDE STREET
HOUSE ADDRESS: HACIENDA HEIGHTS, CA 91745
USA 001-626-369-2884
AR: 0201880201
2003 年 1 月 20 日 收款人: LIN, LI LI 林麗麗

收 據
RECEIPT FOR HOUSE PAYMENT

收到貸款人: 现金 USD$1822.00
RECEIVED FROM: LUO, ZHANJUN
貸款房址: 18180 LA MONDE STREET
HOUSE ADDRESS: HACIENDA HEIGHTS, CA 91745
USA 001-626-369-2884
AR: 0201880201
2003 年 2 月 21 日 收款人: LIN, LI LI 林麗麗

收 據
RECEIPT FOR HOUSE PAYMENT

收到貸款人: 现金 USD$1822.00
RECEIVED FROM: LUO, ZHANJUN
貸款房址: 18180 LA MONDE STREET
HOUSE ADDRESS: HACIENDA HEIGHTS, CA 91745
USA 001-626-369-2884
AR: 0201880201
2003 年 3 月 25 日 收款人: LIN, LI LI 林麗麗

收 據
RECEIPT FOR HOUSE PAYMENT

收到貸款人: 现金 USD$1822.00
RECEIVED FROM: LUO, ZHANJUN
貸款房址: 18180 LA MONDE STREET
HOUSE ADDRESS: HACIENDA HEIGHTS, CA 91745
USA 001-626-369-2884
AR: 0201880201
2003 年 4 月 22 日 收款人: LIN, LI LI 林麗麗

收 據
RECEIPT FOR HOUSE PAYMENT

收到貸款人: 现金 USD$1822.00
RECEIVED FROM: LUO, ZHANJUN
貸款房址: 18180 LA MONDE STREET
HOUSE ADDRESS: HACIENDA HEIGHTS, CA 91745
USA 001-626-369-2884
AR: 0201880201
2003 年 5 月 21 日 收款人: LIN, LI LI 林麗麗

收 據
RECEIPT FOR HOUSE PAYMENT

收到貸款人: 现金 USD$1822.00
RECEIVED FROM: LUO, ZHANJUN
貸款房址: 18180 LA MONDE STREET
HOUSE ADDRESS: HACIENDA HEIGHTS, CA 91745
USA 001-626-369-2884
AR: 0201880201
2003 年 6 月 23 日 收款人: LIN, LI LI 林麗麗

收 據
RECEIPT FOR HOUSE PAYMENT

收到貸款人: 现金 USD$1822.00
RECEIVED FROM: LUO, ZHANJUN
貸款房址: 18180 LA MONDE STREET
HOUSE ADDRESS: HACIENDA HEIGHTS, CA 91745
USA 001-626-369-2884
AR: 0201880201
2003 年 7 月 24 日 收款人: LIN, LI LI 林麗麗

收 據
RECEIPT FOR HOUSE PAYMENT

收到貸款人: 现金 USD$1822.00
RECEIVED FROM: LUO, ZHANJUN
貸款房址: 18180 LA MONDE STREET
HOUSE ADDRESS: HACIENDA HEIGHTS, CA 91745
USA 001-626-369-2884
AR: 0201880201
2003 年 8 月 19 日 收款人: LIN, LI LI 林麗麗

收 據
RECEIPT FOR HOUSE PAYMENT

收到貸款人: 现金 USD$1822.00
RECEIVED FROM: LUO, ZHANJUN
貸款房址: 18180 LA MONDE STREET
HOUSE ADDRESS: HACIENDA HEIGHTS, CA 91745
USA 001-626-369-2884
AR: 0201880201
2003 年 9 月 24 日 收款人: LIN, LI LI 林麗麗

收 據
RECEIPT FOR HOUSE PAYMENT

收到貸款人: 现金 USD$1822.00
RECEIVED FROM: LUO, ZHANJUN
貸款房址: 18180 LA MONDE STREET
HOUSE ADDRESS: HACIENDA HEIGHTS, CA 91745
USA 001-626-369-2884
AR: 0201880201
2003 年 10 月 29 日 收款人: LIN, LI LI 林麗麗

收 據
RECEIPT FOR HOUSE PAYMENT

收到貸款人: 现金 USD$1822.00
RECEIVED FROM: LUO, ZHANJUN
貸款房址: 18180 LA MONDE STREET
HOUSE ADDRESS: HACIENDA HEIGHTS, CA 91745
USA 001-626-369-2884
AR: 0201880201
2003 年 11 月 [illegible] 日 收款人: [illegible]

收 據
RECEIPT FOR HOUSE PAYMENT

收到貸款人: 现金 USD$1822.00
RECEIVED FROM: LUO, ZHANJUN
貸款房址: 18180 LA MONDE STREET
HOUSE ADDRESS: HACIENDA HEIGHTS, CA 91745
USA 001-626-369-2884
AR: 0201880201
2003 年 12 月 22 日 收款人: LIN, LI LI 林麗麗

PROMISSORY NOTE - STRAIGHT - SECURED BY DEED OF TRUST

$ 168,000.00 (Sum) 16150 La Monde St. Hacienda Hts, (City) CA. (State) June 24, (Date) 1999.

24th of June 1999 (Number of Days, Months and/or Years) after date, for value received, the undersigned maker(s) promise(s) to pay to

the order of trustee, Lili Lin (Date of Birth: 22nd Nov.1947)

, or order

at such place as may be designated by the trustee Lili Lin (DOB 22Nov1947) in writing.

the sum of One hundred sixth eight thousand dollars (USD$168,000.00) DOLLARS,

with interest from June 24th, 1999 on the unpaid principal at the rate of

(10.00%) ten percent per annum, payable in two hundred forty(240) consecutive monthly installments of sixteen hundred twenty two dollars ($1,622.00) on 24th day of each and every month.

Should interest not be paid when due, it shall thereafter bear like interest as the principal, but such unpaid interest so compounded shall not exceed an amount equal to simple interest on the unpaid principal at the maximum rate permitted by law. Should default be made in payment of interest when due, the whole sum of principal and accrued interest shall become immediately due, without notice, at the option of the holder of this note. Interest after maturity will accrue at the rate indicated above. Principal and interest are payable in lawful money of the United States. Each maker will be jointly and severally liable, and consents to the acceptance of security or substituted security for this note, and waives presentment, demand and protest and the right to assert any statute of limitations. A married person who signs this note agrees that recourse may be had against his/her separate property for any obligation contained herein. If any action be instituted on this note, the undersigned promise(s) to pay such sum as the Court may fix as attorney's fees. This Note is secured by a Deed of Trust of even date herewith.

Zhanjun Luo

Zhanjun Luo

PATRICIA M. SANCHEZ
COMM #1070745
Notary Public - California
LOS ANGELES COUNTY
My Comm. Exp. Sept. 4, 1999

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On 6-25-99 (DATE) before me, Patricia M. Sanchez (NAME, TITLE OF OFFICER - E.G. "JANE DOE, NOTARY PUBLIC")

personally appeared Zhan Jun Luo (NAME(S) OF SIGNER(S))

☐ personally known to me - OR - ☑ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

PATRICIA M. SANCHEZ
COMM. #1070745
Notary Public - California
LOS ANGELES COUNTY
My Comm. Exp. Sept. 4, 1999

WITNESS my hand and official seal.

Patricia M. Sanchez
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☑ CORPORATE OFFICER

_____ (TITLE(S))

☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))
CALIFED. BANK

DESCRIPTION OF ATTACHED DOCUMENT

Promissory Note - Straight
TITLE OR TYPE OF DOCUMENT

6-25-99 (One)
NUMBER OF PAGES

6-25-99 N/A
DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

©1990 NATIONAL NOTARY ASSOCIATION • 8236 Remmet Ave., P.O. Box 7184 • Canoga Park, CA 91309-7184

DATE: March 10, 2006 TIME: 14:49:21
ESCROW NO: 25141-ADD
ESCROW OFFICER: Antonia Delgado/Anne De La Ros CLOSING DATE: March 8, 2006

SELLER FINAL CLOSING STATEMENT

SELLER(S): Alfred H. Siegel, solely in his capacity as Chapter 7 and Trustee of the Bankruptcy Estate of Stephen Law
BUYER(S): Patricia King
PROPERTY: 16150 La Monde Street, La Puente Area, CA 91745

	$ DEBITS	$ CREDITS
FINANCIAL:		
Total Consideration		680,000.00
PRORATIONS/ADJUSTMENTS:		
Prepaid County Taxes at $2,080.66 Semi-Annual from 03/09/06 to 07/01/06		1,294.63
Paid Outside of Escrow	20,000.00	
TITLE CHARGES:		
CLTA Standard Policy for 680,000.00	2,100.00	
Documentary Transfer Tax	748.00	
Sub Escrow Fee	82.50	
record Cert Ct Order	50.00	
Fedex	15.00	
wire fee	15.00	
1st half 2005-06 taxes w/penalty	2,288.73	
2nd half 2005-06 taxes	2,080.66	
Recording fees for Sub/trustee & recon	18.00	
ESCROW CHARGES		
Escrow Fee	1,320.00	
Draw Deed	75.00	
Fed/Ex Messenger Fees	75.00	
IRS 1099 Fee	100.00	
wire fee	25.00	
Escrow archive	25.00	
PAYOFFS - Washington Mutual		
Total Payoff $141,113.61		
Principal Balance	134,888.89	
Interest to 02/28/06	3,964.56	
Interest Fr. 03/01/06 To 03/09/06	181.17	
Forwarding/Demand Fee	30.00	
Late Charges	344.47	
other outstanding fees	23.90	
recording fee	9.00	
Recoverable Balance	862.20	
Bk fees and costs	809.00	

PAYOFFS - Alfred H. Siegel for LB Lin d/t recd 06/28/99

NETTIE BECKER ESCROW, INC.
301 North Canon Drive, Beverly Hills, California 90210
(310) 275-6042 Fax (310) 275-1219

Escrow No: 25141-ADO

Total Payoff $280,813.17		
Principal Balance	280,813.17	
COMMISSIONS:		
Listing Brokers Commission to Coldwell Banker 1.50%	10,200.00	
Selling Brokers Commission to Lahinas Properties 3.00%	20,400.00	
Listing Brokers Commission to Century 21 A Better Service 1.50%	10,200.00	
MISCELLANEOUS CHARGES:		
Property I.D. NHD report	114.00	
Julio Bonilla reimb for misc exp	878.05	
NET PROCEEDS DUE SELLER	$ 188,777.91	
TOTALS	$ 581,284.63	$ 581,284.63

SAVE THIS STATEMENT FOR INCOME TAX PURPOSES

99 1179298

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
12:01 PM JUN 28 1999

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

FEE CODE	AMA	NAA	A	20	R	19	21	22
REC FEE	NO PAGES	NO TITLES	POOR	D.A. FEE	SURVEY MON	NOTP	PARCEL LEN	NON CONF

EXAMINER'S INIT

Assessor's Identification Number (AIN)
To Be Completed By Examiner Or Title Company In Black Ink

Number of Parcels Shown

2

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENTS TO

NAME LILI LIN
STREET 16150 LA MONDE ST.
ADDRESS
CITY HACIENDA HEIGHTS,
STATE CA 91745-4230
ZIP

Title Order No. Escrow No.

99 1179298

4
21

D.A FEE Code 20 $ 4.00

FEE $ 23.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, made this 24th day of June 1999,

between ZHANJUN LUO, a single man

herein called Trustor,

whose address is 16150 La Monde St. Hacienda Heights, California 91745
(Number and Street) (City) (State) (ZIP)

NO DOCUMENTARY TRANSFER TAX IS DUE

Lili Lin, herein called Trustee, and

Lili Lin, herein called Beneficiary

Trustor irrevocably grants, transfers and assigns to Trustee, in trust, with power of sale, all that real property in the City of Hacienda Heights, County of Los Angeles, State of CA, described as

Lot 68 of tract No. 27171, in the County of Los Angeles, State of California, as shown on a map recorded in book 695, pages 32 to 35 inclusive of maps, in the office of the county recorder of said county.
Except therefrom all oil, gas minerals and other hydrocarbons, below a depth of 500 feet, without the right of surface entry, as reserved in deeds of record. A.P.N. 8205-012-009

TOGETHER with all rights, privileges, title and interest which Trustor now has or may hereafter acquire in or to said property, including, without limitation, the rents, issues and profits thereof, and with the appurtenances and all buildings and improvements now or hereafter placed thereon, it being understood and agreed that all classes of property, attached or unattached, used in connection therewith shall be deemed fixtures and subject to the property above described.

SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary hereinbelow to collect and apply such rents, issues and profits.

(For purposes of this instrument all of the foregoing described property, property rights and interests shall be referred to as "the property.")

MAIL TAX STATEMENT TO 16150 La Monde, Hacienda Hts, CA 91745

WOLCOTT'S FORM 843 Basic Order 148
DEED OF TRUST AND ASSIGNMENT OF RENTS WITH PROMISSORY NOTE STANDARD fourth power of sale and note clauses for full reconveyance Rev. 4-94 ©1994 WOLCOTT'S FORMS INC.

RECORD PAGES 1, 2, 3 & 4 ONLY. Page 1 of 4

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This Deed of Trust is for the purpose of securing 1 Payment of the indebtedness in the principal sum of $ _____, evidenced by that certain promissory note of even date herewith made by Trustor, or any one of them, payable to Beneficiary or order, and any extension or renewal thereof, which promissory note is substantially in the following form, 2 Performance of each agreement of Trustor contained or incorporated herein by reference, 3 Payment of such sums as may be advanced by Beneficiary or Trustee to protect the security in accordance with the terms of this Deed of Trust, plus interest thereon at the rate set forth in said promissory note, and 4 Payment of such further sums as may be advanced by Beneficiary when evidenced by another promissory note (or promissory notes) reciting it is so secured

PROMISSORY NOTE - STRAIGHT - SECURED BY DEED OF TRUST

$168,000.00 (Date) 16150 La Monde St. Hacienda Hts, CA. (Place) June 24, (Date) 1999,

24th of June 1999 after date, for value received, the undersigned maker(s) promise(s) to pay to
(Number or Date) (Business and/or Trust)

the order of trustee, Lili Lin

_____, or order

at such place as may be designated by the trustee Lili Lin in writing.

the sum of One hundred sixty eight thousand dollars (USD$168,000.00) DOLLARS,

with interest from June 24th, 1999 on the unpaid principal at the rate of

(10.00%)ten percent per annum, payable in two hundred forty(240) consecutive monthly installments of sixteen hundred twenty two dollars ($1,622.00) on 24th day of each and every month. Should interest not be paid when due, it shall thereafter bear like interest as the principal, but such unpaid interest so compounded shall not exceed an amount equal to simple interest on the unpaid principal at the maximum rate permitted by law. Should default be made in payment of interest when due, the whole sum of principal and accrued interest shall become immediately due, without notice, at the option of the holder of this note. Interest after maturity will accrue at the rate indicated above. Principal and interest are payable in lawful money of the United States. Each maker will be jointly and severally liable, and consents to the acceptance of security or substituted security for this note, and waives presentment, demand and protest and the right to assert any statute of limitations. A married person who signs this note agrees that recourse may be had against his/her separate property for any obligation contained herein. If any action be instituted on this note, the undersigned promise(s) to pay such sum as the Court may fix as attorney's fees. This Note is secured by a Deed of Trust of even date herewith.

_____ _____

_____ _____

To protect the security of this Deed of Trust, Trustor agrees:

(1) To keep the property in good condition and repair, not to remove, substantially alter or demolish any building thereon, to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting the property or requiring any alterations or improvements to be made thereon, not to commit or permit waste thereof, not to commit, suffer or permit any act upon the property in violation of law, to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of the property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire and, if required by Beneficiary, other insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to the extent permitted by law, to pay all costs and expenses, including the cost of evidence of title and attorney's fees, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust or enforce the rights of Beneficiary or Trustee hereunder.

(4) To pay at least ten days before delinquency all taxes and assessments affecting the property, including assessments on appurtenant water stock, when due, all encumbrances, charges and liens, with interest, on the property or any part thereof, which appear to be prior or superior hereto; and all costs, fees and expenses of this Trust to the extent permitted by law.

(5) Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation to do so, and without notice to or demand upon Trustor, and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. Beneficiary

RECORD PAGES 1, 2, 3 & 4 ONLY, Page 2 of 5 99 1179298

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or Trustee being authorized to enter upon the property for such purposes, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees

(6) To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the terms of this Deed of Trust, with interest from date of expenditure at the rate set forth in the aforesaid promissory note

(7) That any award of damages in connection with any condemnation for public use or injury to said property or any part thereof is hereby assigned and shall be paid to beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance

(8) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(9) That at any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said promissory note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may reconvey any part of the property, consent to the making of any map or plat thereof, join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof

(10) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said promissory note to Trustee for cancellation and retention and upon repayment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof The grantee in such reconveyance may be described as "the person or persons legally entitled thereto "

(11) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during continuance of these Trusts, to collect the rents, issues and profits of the property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the property or any part thereof, in his own name sue for or otherwise collect such rents issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine The entering upon and taking possession of the property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice

(12) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold the property, which notice Trustee shall cause to be filed for record Beneficiary shall also deposit with Trustee this Deed of Trust, said promissory note and all documents evidencing expenditures secured hereby

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, expressed or implied The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale

After deducting all costs, fees and expenses of Trustee and of this Trust to the extent permitted by law, including the cost of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the rate set forth in the aforesaid promissory note, all other sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto

Immediately after such sale, Trustor shall surrender possession of the property to the purchaser, in the event possession has not previously been surrendered by Trustor, and upon failure to vacate the property, Trustor shall pay to the purchaser the reasonable rental value of the property, and/or at purchaser's option, may be dispossessed in accordance with the law applicable to tenant's holding over

(13) That Trustor, or if the property shall have been transferred, the then record owner, together with Beneficiary, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by each and recorded in the office of the recorder of the county or counties where the property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded, the name and address of the new Trustee, and such other matters as may be required by law If notice of default shall have been recorded, this

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power of substitution cannot be exercised until after the costs, fees, and expenses of the then acting Trustee shall have been paid to such Trustee, who shall endorse receipt thereof upon such instrument of substitution. The procedure herein provided for substitution of Trustees shall be exclusive of all other provisions for substitution, statutory or otherwise, to the extent permitted by law.

(14) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the promissory note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural, and all obligations of each Trustor hereunder are joint and several.

(15) That Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

(16) Without affecting the liability of Trustee or of any other party now or hereafter bound by the terms hereof for any obligation secured hereby, Beneficiary may, from time to time and with or without notice as he shall determine, release any person now or hereafter liable for the performance of such obligation, extend the time for payment or performance, accept additional security, and alter, substitute or release any security.

(17) Trustee or Beneficiary may enter upon and inspect the premises at any reasonable time.

(18) No remedy hereby given to Beneficiary or Trustee is exclusive of any other remedy hereunder or under any present or future law. No delay on the part of Trustee or Beneficiary in enforcing their respective rights or remedies hereunder shall constitute a waiver thereof.

(19) Trustor waives the right to assert at any time any statute of limitations as a bar to any action brought to enforce any obligation hereby secured.

(20) Should Trustor, without Beneficiary's written consent, voluntarily sell, transfer or convey his interest in the property or any part thereof, or if by operation of law, it be sold, transferred or conveyed, then Beneficiary may, at its option, declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require such consent of future or successive transactions.

(21) The invalidity or unenforceability of any provision herein shall not effect the validity and enforceability of any other provision.

Each undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder shall be mailed to him at the address hereinabove set forth.

Zhanjun Luo

STATE OF California
COUNTY OF Los Angeles

On 6/25/99 before me, Patricia M. Sanchez

personally appeared Zhan Jun Luo

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

RIGHT THUMBPRINT (Optional)

RIGHT THUMBPRINT (Optional)

CAPACITY CLAIMED BY SIGNER
☐ INDIVIDUAL(S)
☐ CORPORATE
OFFICER(S)
☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY IN FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER

SIGNER IS REPRESENTING:
(Name of Person(s) or Entity(ies))

CALFORM

WMD1

PATRICIA M. SANCHEZ
COMM #1167943
Notary Public – California
LOS ANGELES COUNTY
My Comm Exp. Sept. 4, 1999

99 1179298

RECORD PAGES 1, 2, 3 & 4 ONLY. Page 4 of 5

COUNTY RECORDS RESEARCH
4952 WARNER AVENUE #105
HUNTINGTON BEACH, CA 92649
(714)846-6634 FAX (714)846-8720

February 22, 2000

Foreclosure Title Instructions

STEWART TITLE COMPANY
505 NORTH BRAND #1200
GLENDALE, CA 91203

Attn: **STEVE DUNSMORE**, Title Officer

Order Number	New X	Foreclosure Number CBS-1030 KEN

Please furnish Trustee's Sale Guarantee with liability of $170,000.00 , 3 copies of T.S.G. and Record the Notice of Default

The Subject Deed of Trust recorded on 06/28/1999 in Book , Page as Instrument No. 99-1179298 in the County of LOS ANGELES.

Property Description: **As more fully described on said Deed of Trust.**

We enclose the following:

Substitution of Trustee
Notice of Default

Other Instructions:

PLEASE CALL THIS OFFICE ON THE DAY OF RECORDING with recording data, charges, and Request for Notices, to be followed by your 10 day letter. We should receive your letter within 5 days of the recording date, along with a conformed copy of the Notice of Default.

RECORD NOD
Record Substitution

By: _____
KURT S. DE MEIRE, COUNTY RECORDS RESEARCH, TRUSTEE DIV.

STATUS REPORT OF 02/22/00 Page #1

T.S. Number: CR0-1030
Loan Number: CR0-1030
Status: ACTIVE FORECLOSURE

Loan Type: Conventional
Date Printed: 02/22/00

Beneficiary: LILI LIN (626)864-6852
BOX 770
ARTESIA, CA 90702

Present Owner: ZHANJUN LUO
16150 LA MONDE ST.
HACIENDA HEIGHTS, CA 91745

Title Company Code: STEWART Phone: (800)821-8685 Order #

Entered	02/22/00	Record Notice of Default	Pending
10 Day Mail	Pending	One Month Mail	Pending
Authorization to Publish	Pending	Authorization to Pub Signed	Pending
Set Sale	Pending		

Beneficiary's Advances, Costs, and Expenses

Date	Code	Description	Amount	Interest
12/23/99	B	2 payments @$1,622.00	$3,244.00	
02/22/00	A	Notary	$10.00	
			$3,254.00	$0.00
Total Due the Beneficiary:			$3,254.00	

Trustee's Fees, Costs, and Expenses

Date	Code	Description	Amount	Interest
02/22/00	C	Phone calls & faxes	$25.00	
02/22/00	M	Estimated Mail	$25.00	
02/22/00	R	Record NOD	$12.00	
02/22/00	R	Record Rescission	$25.00	
02/22/00	R	Record Substitution of Trustee	$12.00	
02/22/00	T	TRUSTEE SALE GUARANTEE POLICY	$700.00	
02/22/00	F	Trustee's Fees	$784.73	
			$1,583.73	$0.00
Total Foreclosure Costs:			$1,583.73	
Total Due the Trustee:			$1,583.73	

Total Required to Reinstate as of 02/22/00 $4,837.73
Daily Interest of $0.00 due until funds are received.

Master Detail Report as of 02/22/2000 Page #1

File Number: CR0-1030 Loan Type: 1
Loan Number: CR0-1030 Date Printed: 02/22/2000

Beneficiary: LILI LIN Ph: (626)864-6852
BOX 770
ARTESIA, CA 90702

Present Trustor: ZHANJUN LUO
16150 LA MONDE ST.
HACIENDA HEIGHTS, CA 91745

Declaration of Default

Date of the Default 12/24/1999 Principal Balance due $167,890.00

Trust Deed Information

Deed of Trust dated 06/24/1999 Trust Deed Recorded 06/28/1999
In County of LOS ANGELES, CA
Instrument 99-1179298 Book/Docket Page
Trustor(s):
ZHANJUN LUO A SINGLE MAN

Trustor address: 16150 LA MONDE ST.
HACIENDA HEIGHTS, CA 91745

Original Trustee: LILI LIN

Current Trustee: COUNTY RECORDS RESEARCH,
TRUSTEE DIVISION

Original Beneficiary: LILI LIN

Current Beneficiary: LILI LIN

Promissory Note Information

Trust Deed dated 06/24/1999 Note dated 06/24/1999
Trust Deed amount: $168,000.00 Note amount: $168,000.00
Number of notes 1 Interest rate: 10.00000%
Payment amount: $1,622.00 every 1 month(s)
Note maturity date: 06/24/2019 Interest Paid to: 11/24/1999
Late charge amount: $0.00 after 0 days
Interest rate on advances: 10.00000%

Property Address Information

16150 LA MONDE ST.
HACIENDA HEIGHTS, CA 91745

General Information

Substitution
Owner Occupied
Compound Interest

99 1179298

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
12:01 PM JUN 28 1999

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

FL CODE	N/A	N/A	0	20	9	19	04	19
REC FEE	NO PAGES	NO TITLES	PCOR	D.A. FEE	SURVEY MON.	NOTIF.	INVOL LIEN	NON CONF.

EXAMINER'S INT.

Assessor's Identification Number (AIN)
To Be Completed By Examiner Or Title Company In Black Ink

Number of Parcels Shown

RECORDING REQUESTED BY

99 1179298

6/28/99

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENTS TO:

NAME LILI LIN
STREET ADDRESS 16150 LA MONDE ST.
CITY HACIENDA HEIGHTS,
STATE CA 91745-4230
ZIP 4-27
L

D.A FEE Code 20 $ 4.00 FEE $ 23.00

Title Order No. Escrow No.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, made this 24th day of June 1999,

between ZHANJUN LUO, a single man

, herein called Trustor,

whose address is 16150 La Monde St. Hacienda Heights, California 91745
(NUMBER AND STREET) (CITY) (STATE) (ZIP)

NOTIFICATION SENT-$4.00

Lili Lin, herein called Trustee, and

Lili Lin, herein called Beneficiary.

Trustor irrevocably grants, transfers and assigns to Trustee, in trust, with power of sale, all that real property in the City of Hacienda Heights, County of Los Angeles, State of CA, described as:

Lot 68 of tract No. 27171, in the County of Los Angeles, State of California, as shown on a map recorded in book 695, pages 32 to 35 inclusive of maps, in the office of the county recorder of said county.
Except therefrom all oil, gas minerals and other hydrocarbons, below a depth of 500 feet, without the right of surface entry, as reserved in deeds of record. A.P.N. 8205-012-009

TOGETHER with all rights, privileges, title and interest which Trustor now has or may hereafter acquire in or to said property, including, without limitation, the rents, issues and profits thereof, and with the appurtenances and all buildings and improvements now or hereafter placed thereon, it being understood and agreed that all classes of property, attached or unattached, used in connection therewith shall be deemed fixtures and subject to the property above described;

SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary hereinbelow to collect and apply such rents, issues and profits;

(For purposes of this instrument all of the foregoing described property, property rights and interests shall be referred to as "the property.")

MAIL TAX STATEMENT TO: 16150 La Monde,Hacienda Hts, CA 91745

This Deed of Trust is for the purpose of securing: 1. Payment of the indebtedness in the principal sum of $ _____, evidenced by that certain promissory note of even date herewith made by Trustor, or any one of them, payable to Beneficiary or order, and any extension or renewal thereof, which promissory note is substantially in the following form; 2. Performance of each agreement of Trustor contained or incorporated herein by reference; 3. Payment of such sums as may be advanced by Beneficiary or Trustee to protect the security in accordance with the terms of this Deed of Trust, plus interest thereon at the rate set forth in said promissory note; and 4. Payment of such further sums as may be advanced by Beneficiary when evidenced by another promissory note (or promissory notes) reciting it is so secured.

PROMISSORY NOTE - STRAIGHT - SECURED BY DEED OF TRUST

$ 168,000.00 16150 La Monde St. Hacienda Hts, CA. June 24, 1999
(City) (State) (Date)

24th of June 1999 after date, for value received, the undersigned maker(s) promise(s) to pay to
(Number of Days, Months and/or Years)

the order of trustee, Lili Lin

_____, or order

at such place as may be designated by the trustee Lili Lin in writing.

the sum of One hundred sixty eight thousand dollars (USD$168,000.00) DOLLARS,

with interest from June 24th, 1999 on the unpaid principal at the rate of

(10.00%)ten percent per annum, payable in two hundred forty(240) consecutive monthly installments of sixteen hundred twenty two dollars ($1,622.00) on 24th day of each and every month.

Should interest not be paid when due, it shall thereafter bear like interest as the principal, but such unpaid interest so compounded shall not exceed an amount equal to simple interest on the unpaid principal at the maximum rate permitted by law. Should default be made in payment of interest when due, the whole sum of principal and accrued interest shall become immediately due, without notice, at the option of the holder of this note. Interest after maturity will accrue at the rate indicated above. Principal and interest are payable in lawful money of the United States. Each maker will be jointly and severally liable, and consents to the acceptance of security or substituted security for this note, and waives presentment, demand and protest and the right to assert any statute of limitations. A married person who signs this note agrees that recourse may be had against his/her separate property for any obligation contained herein. If any action be instituted on this note, the undersigned promise(s) to pay such sum as the Court may fix as attorney's fees. This Note is secured by a Deed of Trust of even date herewith.

_____ _____

_____ _____

To protect the security of this Deed of Trust, Trustor agrees:

(1) To keep the property in good condition and repair; not to remove, substantially alter or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of the property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire and, if required by Beneficiary, other insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to the extent permitted by law, to pay all costs and expenses, including the cost of evidence of title and attorney's fees, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust or enforce the rights of Beneficiary or Trustee hereunder.

(4) To pay: at least ten days before delinquency all taxes and assessments affecting the property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on the property or any part thereof, which appear to be prior or superior hereto; and all costs, fees and expenses of this Trust to the extent permitted by law.

(5) Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation to do so, and without notice to or demand upon Trustor, and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary

or Trustee being authorized to enter upon the property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(6) To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the terms of this Deed of Trust, with interest from date of expenditure at the rate set forth in the aforesaid promissory note.

(7) That any award of damages in connection with any condemnation for public use or injury to said property or any part thereof is hereby assigned and shall be paid to beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(8) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(9) That at any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said promissory note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of the property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(10) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said promissory note to Trustee for cancellation and retention and upon repayment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

(11) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during continuance of these Trusts, to collect the rents, issues and profits of the property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the property or any part thereof, in his own name sue for or otherwise collect such rents issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(12) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold the property, which notice Trustee shall cause to be filed for record. Beneficiary shall also deposit with Trustee this Deed of Trust, said promissory note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust to the extent permitted by law, including the cost of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the rate set forth in the aforesaid promissory note; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

Immediately after such sale, Trustor shall surrender possession of the property to the purchaser, in the event possession has not previously been surrendered by Trustor, and upon failure to vacate the property, Trustor shall pay to the purchaser the reasonable rental value of the property, and/or at purchaser's option, may be dispossessed in accordance with the law applicable to tenant's holding over.

(13) That Trustor, or if the property shall have been transferred, the then record owner, together with Beneficiary, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by each and recorded in the office of the recorder of the county or counties where the property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded, the name and address of the new Trustee, and such other matters as may be required by law. If notice of default shall have been recorded, this

5

power of substitution cannot be exercised until after the costs, fees, and expenses of the then acting Trustee shall have been paid to such Trustee, who shall endorse receipt thereof upon such instrument of substitution. The procedure herein provided for substitution of Trustees shall be exclusive of all other provisions for substitution, statutory or otherwise, to the extent permitted by law.

(14) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the promissory note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural, and all obligations of each Trustor hereunder are joint and several.

(15) That Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

(16) Without affecting the liability of Trustee or of any other party now or hereafter bound by the terms hereof for any obligation secured hereby, Beneficiary may, from time to time and with or without notice as he shall determine, release any person now or hereafter liable for the performance of such obligation, extend the time for payment or performance, accept additional security, and alter, substitute or release any security.

(17) Trustee or Beneficiary may enter upon and inspect the premises at any reasonable time.

(18) No remedy hereby given to Beneficiary or Trustee is exclusive of any other remedy hereunder or under any present or future law. No delay on the part of Trustee or Beneficiary in enforcing their respective rights or remedies hereunder shall constitute a waiver thereof.

(19) Trustor waives the right to assert at any time any statute of limitations as a bar to any action brought to enforce any obligation hereby secured.

(20) Should Trustor, without Beneficiary's written consent, voluntarily sell, transfer or convey his interest in the property or any part thereof, or if by operation of law, it be sold, transferred or conveyed, then Beneficiary may, at its option, declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require such consent of future or successive transactions.

(21) The invalidity or unenforceability of any provision herein shall not affect the validity and enforceability of any other provision.

Each undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder shall be mailed to him at the address hereinabove set forth.

Zhanjun Luo

Zhanjun Luo

STATE OF California

COUNTY OF Los Angeles

On 6/25/99 before me, Patricia M. Sanchez

personally appeared Zhan Jun Luo

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Patricia M. Sanchez

PATRICIA M. SANCHEZ
COMM. #1070745
Notary Public - California
LOS ANGELES COUNTY
My Comm. Exp. Sept. 4, 1999

RIGHT THUMBPRINT (Optional)

TOP OF THUMB HERE

RIGHT THUMBPRINT (Optional)

TOP OF THUMB HERE

CAPACITY CLAIMED BY SIGNER(S)
☐ INDIVIDUAL(S)
☐ CORPORATE
OFFICERS
☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY IN FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER

SIGNER IS REPRESENTING:
CA. FED BANK

WMD1

WMD2

APPENDIX GG

SA - 41a

RECORD PAGES 1, 2, 3 & 4 ONLY. Page 4 of 4

99 1179298

Subj: 法律诉讼
Date: 6/10/2007 6:49:58 PM Pacific Daylight Time
From: [redacted]
To: stephen11688@aol.com
CC rushtown@aol.com

罗恩军：
你好！我还要花的多少钱才能打完在这法律官司。
[redacted]的损失太大，尽快解决。

林丽明

==========

快来和我一起享受TOM免费邮箱吧！看看除了1.5G，还有什么？[redacted]

免费升级大相册、大网络U盘 看看女人都在聊什么? 美图尽赏 聊天世界

明星金曲免费送(http://mm.tom.com/ivr/)：周杰伦 林俊杰 庾龙 张惠妹

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炫酷彩铃免费送(http://mm.tom.com/cailing/)：周杰伦帮你接电话 麻烦女朋友 七里香 小城故事

==========

eturn-Path: <linlili1947@tom.com>
eceived: from rly-yi02.mx.aol.com (rly-yi02.mail.aol.com [172.18.180.130]) by air-yi03.mail.aol.com (v115.17) with ESMTP id
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eceived: from tom.com (smtpr7.tom.com [202.108.252.137]) by rly-yi02.mx.aol.com (v115.17) with ESMTP id
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essage-ID: <466CAA2F.00001A.25278@bjapp33>
ate: Mon, 11 Jun 2007 09:49:35 +0800 (CST)
om: "=?gb2312?B?wdbA9sD2?=" <linlili1947@tom.com>
o: stephen11688@aol.com
c: rushtown@aol.com
ubject: =?gb2312?B?t6jCycvfy88=?=
riority: 3
Originating-IP: [75.85.51.221]
Mailer: <!-- CoreMail Version 2.5 Copyright (c) 2002-2003 www.tebie.com --> 163net
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AOL-IP: 202.108.252.137
AOL-SCOLL-SCORE: 1:2:459729349:6710886
AOL-SCOLL-URL_COUNT: 10

Subj: **Re: Your case in California,**
Date: 6/5/2007 7:37:25 AM Pacific Daylight Time
From: Rushtown
To: linlili1947@tom.com
CC: Stephen11688

In a message dated 6/5/2007 12:35:10 AM Pacific Daylight Time, linlili1947@tom.com writes:

> Dear Mr. Smyth:
> Here is time about 3.30 pm on 5th June, 2007 in China
> I am in receipt your email after Stephen forward my email to you.
> your email is very long, my english is not too good, i need my friend for translated
> Thank you very much, I beliver you do the good wroks. stephen talk me you are lawyer for over 30 year
>
> Lin, Lili

That you for replying. I will do my best on your case. Andrew Smyth

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See what's free at AOL.com.

eturn-Path
eceived: from rly-ma10.mail.aol.com (
MAILINMA103-8d146651218356; Tue, 05 Jun 2007 03:35:09 -0400
eceived: from tom.com (smtpr5.tom.com [202.108.252.135]) by rly-ma10.mail.aol.com (v115.11) with ESMTP id
AILRELAYINMA103-8d146651218356; Tue, 05 Jun 2007 03:34:51 -0400
IME-Version: 1.0
essage-ID: <4665120A.0000C4.30406@bjapp31>
ate: Tue, 5 Jun 2007 15:34:34 +0800 (CST)
om: "=?gb2312?B?wdbA9sD2?=" <linlih1947@tom.com>
): rushtown@aol.com
: stephen11688@aol.com
ubject: =?gb2312?B?UmU6IFtvdXlgY2FzZSBpbiBDYWxpZm9ybmlhLA==?=
Priority: 3
Originating-IP: [75.85.51.221]
Mailer: <!-- CoreMail Version 2.5 Copyright (c) 2002-2003 www.tebie.com --> 163net
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AOL-IP: 202.108.252.135
AOL-SCOLL-SCORE: 1:2:407472493:6710886
AOL-SCOLL-URL_COUNT: 10

Subj: **Fwd: ¨ÁÉÊßÊÍ**
Date: 2007/6/10 22:37:51 Pacific Daylight Time
From: Stephen11688
To: Rushtown
CC: Stephen11688, linlili1947@tom.com

I just received a email from Lili Lin in Chinese.
translation in English as following:

Stephen Law:
How are you doing? How much more money I need to spend to finish this lawsuit.

I lost too much money, if we can resolved as soon as possible.

Lili Lin

See what's free at AOL.com.

Forwarded Message
Subj: 法律诉讼
Date: 2007/6/10 18:49:58 Pacific Daylight Time
From: linlili1947@tom.com
To: stephen11688@aol.com
CC: rushtown@aol.com
Sent from the Internet (Details)

罗展军：
你好！我还要花的多少钱才能打完在这法律官伺，
我的损失太大，尽快解决。

林丽丽

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炫酷彩铃免费送(http://mm.tom.com/cailing/)：周杰伦帮你接电话 寂项女朋友 七里香 小城故事

==========

Subj: 法律诉讼
Date: 2007/6/11 0:36:09 Pacific Daylight Time
From: linlili1947@tom.com
To: rushtown@aol.com
CC: stephen11688@aol.com

Mr.Smyth;
This is very good news I will meet you in China and tell you more detail of Mr. Law's loan of 1999, June.ok?

from 2005 I retained you as my lawyer I have not meet you, althought we have email many times discussing the case of my bankruptcy, and Stephen law recommend you to me.
Holp to see you soon.

Lin, LiLi

> You have to first make a very good opposition to all their motions. And
> answer all their discovery requests. When they see that there is a risk that
> they will lose because they tried something that was cheating—they might
> settle.
> BTW I am visiting China in October. The typical tourist tour, Beijing,
> Shanghai, Xian, and a Yangze River tour for 3 of the days.
> Maybe I can meet Lill Lin and then deduct the expense of the trip from my
> taxable income as a business expense. Andrew Smyth
>
>
>
> ********** See what's free at http://www.aol.com.
>

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明星金曲免费送(http://mm.tom.com/ivr/)：周杰伦 林俊杰 庞龙 张惠妹

劲爆歌曲尽情点(http://mm.tom.com/ivr/)：郭元甲 吉祥三宝 人质 曹操

炫酷彩铃免费送(http://mm.tom.com/cailing/)：周杰伦帮你接电话 麻烦女朋友 七里香 小城故事

==========

Return-Path: <linlili1947@tom.com>

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Received: from tom.com (smtp5.tom.com [202.108.252.135]) by rly-mg05.mx.aol.com (v115.17) with ESMTP id MAILRELAYINMG055-a13466cfb5fea; Mon, 11 Jun 2007 03:36:00 -0400

MIME-Version: 1.0

Message-ID: <466CFB5A.0000F0.22066@bjapp33>

Date: Mon, 11 Jun 2007 15:35:54 +0800 (CST)

From: "=?gb2312?B?wdbA9sD2?=" <linlili1947@tom.com>

To: rushtown@aol.com

Cc: stephen11688@aol.com

Subject: =?gb2312?B?lLeowsnL38vP?=

X-Priority: 3

X-Originating-IP: [75.85.51.221]

X-Mailer: <!-- CoreMail Version 2.5 Copyright (c) 2002-2003 www.tebie.com --> 163net

Content-Type: Multipart/Alternative; boundary="Boundary-=_ZPfFDntFkQoWBhHrMBvsKfngyYbz"

X-AOL-IP: 202.108.252.135

X-AOL-SCOLL-SCORE: 1:2:375749659:6710886

X-AOL-SCOLL-URL_COUNT: 10

PROMISSORY NOTE - STRAIGHT - SECURED BY DEED OF TRUST

$168,000.00 16150 La Monde St. Hacienda Hts, (City) CA. (State) June 24, (Date) 1999.

24th of June 1999 (Drawer of Date Moving Another Years) after date, for value received, the undersigned maker(s) promise(s) to pay to

the order of trustee, Lili Lin (Date of Birth: 22nd Nov.1947)

, or order

at such place as may be designated by the trustee Lili Lin (DOB 22Nov1947) in writing.

the sum of One hundred sixth eight thousand dollars (USD$168,000.00) DOLLARS,

with interest from June 24th, 1999 on the unpaid principal at the rate of

(10.00%) ten percent per annum, payable in two hundred forty(240) consecutive monthly installments of sixteen hundred twenty two dollars ($1,622.00) on 24th day of each and every month.

Should interest not be paid when due, it shall thereafter bear like interest as the principal, but such unpaid interest so compounded shall not exceed an amount equal to simple interest on the unpaid principal at the maximum rate permitted by law. Should default be made in payment of interest when due, the whole sum of principal and accrued interest shall become immediately due, without notice, at the option of the holder of this note. Interest after maturity will accrue at the rate indicated above. Principal and interest are payable in lawful money of the United States. Each maker will be jointly and severally liable, and consents to the acceptance of security or substituted security for this note, and waives presentment, demand and protest and the right to assert any statute of limitations. A married person who signs this note agrees that recourse may be had against his/her separate property for any obligation contained herein. If any action be instituted on this note, the undersigned promise(s) to pay such sum as the Court may fix as attorney's fees. This Note is secured by a Deed of Trust of even date herewith.

Zhanjun Luo

Zhanjun Luo

PATRICIA M. SANCHEZ
COMM. #1070745
Notary Public - California
LOS ANGELES COUNTY
My Comm. Exp. Sept. 4, 1999

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Los Angeles
On 6-25-99 (DATE) before me, Patricia M. Sanchez (NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC")
personally appeared Zhan Jun Luo (NAME(S) OF SIGNER(S))

☐ personally known to me - OR - ☑ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

PATRICIA M. SANCHEZ
COMM #1070745
Notary Public - California
LOS ANGELES COUNTY
My Comm. Exp. Sept. 4, 1999

WITNESS my hand and official seal.

Patricia M. Sanchez
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☑ CORPORATE OFFICER
_____ (TITLE(S))
☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER _____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))
CALFED BANK

DESCRIPTION OF ATTACHED DOCUMENT

Promisory Note - straight
TITLE OR TYPE OF DOCUMENT

6-25-99 (One)
NUMBER OF PAGES

6-25-99 N/A
DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

99 1179298

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
12:01 PM JUN 28 1999

SPACE ABOVE THIS LINE RESERVED FOR RECORDER S USE

TITLE(S)

FEE CODE	N/A	N/A	0	20	9_	19	04	19
REC. FEE	NO. PAGES	NO TITLES	PCOR	D.A. FEE	SURVEY MON.	NOTIF.	INVOL. LIEN	NON CONF.

5

EXAMINER S INT.

Assessor s Identification Number (AIN)
To Be Completed By Examiner Or Title Company In Black Ink

Number of Parcels Shown

RECORDING REQUESTED BY

99 1179298

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENTS TO:

NAME LILI LIN
STREET ADDRESS 16150 LA MONDE ST.
CITY HACIENDA HEIGHTS,
STATE CA 91745-4230
ZIP 4230

6/25/99

D.A FEE Code 20 $ 4.00

FEE $ 23.00

Title Order No. _____ Escrow No. _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, made this 24th day of June 1999, _____,

between ZHANJUN LUO, a single man

_____, herein called Trustor,

whose address is 16150 La Monde St. Hacienda Heights, California 91745
(Number and Street) (City) (State) (Zip)

NOTIFICATION SENT-$4 ©

Lili Lin, _____, herein called Trustee, and

Lili Lin, _____, herein called Beneficiary.

Trustor irrevocably grants, transfers and assigns to Trustee, in trust, with power of sale, all that real property in the City of Hacienda Heights, County of Los Angeles, State of CA, described as:

Lot 68 of tract No. 27171, in the County of Los Angeles, State of California, as shown on a map recorded in book 695, pages 32 to 35 inclusive of maps, in the office of the county recorder of said county.
Except therefrom all oil, gas minerals and other hydrocarbons, below a depth of 500 feet, without the right of surface entry, as reserved in deeds of record. A.P.N. 8205-012-009

TOGETHER with all rights, privileges, title and interest which Trustor now has or may hereafter acquire in or to said property, including, without limitation, the rents, issues and profits thereof, and with the appurtenances and all buildings and improvements now or hereafter placed thereon, it being understood and agreed that all classes of property, attached or unattached, used in connection therewith shall be deemed fixtures and subject to the property above described;

SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary hereinbelow to collect and apply such rents, issues and profits;

(For purposes of this instrument all of the foregoing described property, property rights and interests shall be referred to as "the property.")

MAIL TAX STATEMENT TO: 16150 La Monde,Hacienda Hts, CA 91745

WOLCOTTS FORM 843 - (price class 1A)
DEED OF TRUST AND ASSIGNMENT OF RENTS WITH PROMISSORY NOTE - STRAIGHT (with power of sale and with request for full reconveyance) Rev 4-94 ©1994 WOLCOTTS FORMS, INC

This Deed of Trust is for the purpose of securing: 1. Payment of the sum of $ _____, evidenced by that certain promissory note of even date herewith made by Trustor, or any one of them, payable to Beneficiary or order, and any extension or renewal thereof, which promissory note is substantially in the following form; 2. Performance of each agreement of Trustor contained or incorporated herein by reference; 3. Payment of such sums as may be advanced by Beneficiary or Trustee to protect the security in accordance with the terms of this Deed of Trust, plus interest thereon at the rate set forth in said promissory note; and 4. Payment of such further sums as may be advanced by Beneficiary when evidenced by another promissory note (or promissory notes) reciting it is so secured.

PROMISSORY NOTE - STRAIGHT - SECURED BY DEED OF TRUST

$ 168,000.00 (Amount) 16150 La Monde St. Hacienda Hts, CA. (City) (State) June 24, (Date) , 1999 ,

24th of June 1999 (Number of Days, Months and/or Years) after date, for value received, the undersigned maker(s) promise(s) to pay to

the order of trustee, Lili Lin

_____, or order

at such place as may be designated by the trustee Lili Lin in writing.

the sum of One hundred sixty eight thousand dollars (USD$168,000.00) DOLLARS,

with interest from June 24th, 1999 on the unpaid principal at the rate of

(10.000%)ten percent per annum, payable in two hundred forty(240) consecutive monthly installments of sixteen hundred twenty two dollars ($1,622.00) on 24th day of each and every month.

Should interest not be paid when due, it shall thereafter bear like interest as the principal, but such unpaid interest so compounded shall not exceed an amount equal to simple interest on the unpaid principal at the maximum rate permitted by law. Should default be made in payment of interest when due, the whole sum of principal and accrued interest shall become immediately due, without notice, at the option of the holder of this note. Interest after maturity will accrue at the rate indicated above. Principal and interest are payable in lawful money of the United States. Each maker will be jointly and severally liable, and consents to the acceptance of security or substituted security for this note, and waives presentment, demand and protest and the right to assert any statute of limitations. A married person who signs this note agrees that recourse may be had against his/her separate property for any obligation contained herein. If any action be instituted on this note, the undersigned promise(s) to pay such sum as the Court may fix as attorney's fees. This Note is secured by a Deed of Trust of even date herewith.

_____ _____

_____ _____

To protect the security of this Deed of Trust, Trustor agrees:

(1) To keep the property in good condition and repair; not to remove, substantially alter or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of the property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire and, if required by Beneficiary, other insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to the extent permitted by law, to pay all costs and expenses, including the cost of evidence of title and attorney's fees, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust or enforce the rights of Beneficiary or Trustee hereunder.

(4) To pay: at least ten days before delinquency all taxes and assessments affecting the property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on the property or any part thereof, which appear to be prior or superior hereto; and all costs, fees and expenses of this Trust to the extent permitted by law.

(5) Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation to do so, and without notice to or demand upon Trustor, and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary

or Trustee being authorized to enter upon the property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(6) To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the terms of this Deed of Trust, with interest from date of expenditure at the rate set forth in the aforesaid promissory note.

(7) That any award of damages in connection with any condemnation for public use or injury to said property or any part thereof is hereby assigned and shall be paid to beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(8) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(9) That at any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said promissory note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of the property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(10) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said promissory note to Trustee for cancellation and retention and upon repayment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

(11) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during continuance of these Trusts, to collect the rents, issues and profits of the property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the property or any part thereof, in his own name sue for or otherwise collect such rents issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(12) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold the property, which notice Trustee shall cause to be filed for record. Beneficiary shall also deposit with Trustee this Deed of Trust, said promissory note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust to the extent permitted by law, including the cost of evidence of title in connection with such sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the rate set forth in the aforesaid promissory note; all other sums than secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

Immediately after such sale, Trustor shall surrender possession of the property to the purchaser, in the event possession has not previously been surrendered by Trustor, and upon failure to vacate the property, Trustor shall pay to the purchaser the reasonable rental value of the property, and/or at purchaser's option, may be dispossessed in accordance with the law applicable to tenant's holding over.

(13) That Trustor, or if the property shall have been transferred, the then record owner, together with Beneficiary, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by each and recorded in the office of the recorder of the county or counties where the property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded, the name and address of the new Trustee, and such other matters as may be required by law. If notice of default shall have been recorded, this

5

owner of substitution cannot be executed by the original Trustee or any successor in interest of the beneficiary. Trustee shall have been paid
) such Trustee, who shall endorse receipt thereof upon such instrument of substitution. The procedure herein provided for
ubstitution of Trustees shall be exclusive of all other provisions for substitution, statutory or otherwise, to the extent permitted by
aw.

(14) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the promissory note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural, and all obligations of each Trustor hereunder are joint and several.

(15) That Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

(16) Without affecting the liability of Trustee or of any other party now or hereafter bound by the terms hereof for any obligation secured hereby, Beneficiary may, from time to time and with or without notice as he shall determine, release any person now or hereafter liable for the performance of such obligation, extend the time for payment or performance, accept additional security, and alter, substitute or release any security.

(17) Trustee or Beneficiary may enter upon and inspect the premises at any reasonable time.

(18) No remedy hereby given to Beneficiary or Trustee is exclusive of any other remedy hereunder or under any present or future law. No delay on the part of Trustee or Beneficiary in enforcing their respective rights or remedies hereunder shall constitute a waiver thereof.

(19) Trustor waives the right to assert at any time any statute of limitations as a bar to any action brought to enforce any obligation hereby secured.

(20) Should Trustor, without Beneficiary's written consent, voluntarily sell, transfer or convey his interest in the property or any part thereof, or if by operation of law, it be sold, transferred or conveyed, then Beneficiary may, at its option, declare all sums secured hereby immediately due and payable. Consent to one such transaction shall not be deemed to be a waiver of the right to require such consent of future or successive transactions.

(21) The invalidity or unenforceability of any provision herein shall not affect the validity and enforceability of any other provision.

Each undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder shall be mailed to him at the address hereinabove set forth.

Zhanjun Luo

Zhanjun Luo

STATE OF California

COUNTY OF Los Angeles

On 6/25/99 before me, Patricia M. Sanchez

personally appeared Zhan Jun Luo

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Patricia M. Sanchez

PATRICIA M. SANCHEZ
COMM. #1070745
Notary Public - California
LOS ANGELES COUNTY
My Comm. Exp. Sept. 4, 1999

RIGHT THUMBPRINT (Optional) — TOP OF THUMB HERE

RIGHT THUMBPRINT (Optional) — TOP OF THUMB HERE

CAPACITY CLAIMED BY SIGNER(S)
☐ INDIVIDUAL(S)
☐ CORPORATE OFFICERS (TITLES)
☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY IN FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER

SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)): CALFEDBANK

WMDS

99 1179298

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PETITIONER'S BRIEF

RECORD
AND
BRIEFS

No. 12-5196

IN THE

Supreme Court of the United States

STEPHEN LAW,

Petitioner,

v.

ALFRED SIEGEL, TRUSTEE,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF PETITIONER

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QUESTION PRESENTED

Section 522 of the Bankruptcy Code allows debtors to exempt certain property – such as the debtor's homestead – from distribution in the bankruptcy estate. Section 522 expressly states that exempted property may not be used to satisfy "any debt" or "administrative expense." 11 U.S.C. § 522(c), (k). Section 522 further enumerates in exhaustive detail certain exceptions to the debtor's right to exempt property. *See, e.g., id.* § 522(c)(1)–(4), (k)(1)–(2), (o)(1)–(4), (p)(1)(A)–(D), (q)(1)(A)–(B).

In this case, the bankruptcy court acknowledged that Petitioner was entitled to a $75,000 homestead exemption under Section 522, but nonetheless eliminated Petitioner's exemption to make the $75,000 available to pay the administrative expenses of the Trustee and his counsel. The bankruptcy court justified its order as a matter of equity because it found that Petitioner had engaged in misconduct during the bankruptcy proceedings that increased the estate's administrative expenses.

The equitable power of the bankruptcy court is codified at Section 105 of the Code, which states that a bankruptcy court may take any action "necessary or appropriate to carry out the provisions" of the Code. 11 U.S.C. § 105(a).

The question presented is whether Section 105 empowers a bankruptcy court to eliminate an exemption that Section 522 guarantees to the debtor.

PARTIES TO THE PROCEEDING

The Petitioner is Stephen Law.

The Respondent is the Trustee of Petitioner's bankruptcy estate, Alfred Siegel.

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OPINIONS BELOW

The Ninth Circuit's opinion, J.A. 51a–53a, is unpublished.[1] The Bankruptcy Appellate Panel's opinion, J.A. 54a–80a, is unpublished. The bankruptcy court's opinion, J.A. 81a–97a, is unpublished.

JURISDICTION

The Ninth Circuit's judgment was entered on June 6, 2011. A timely petition for rehearing en banc was denied on April 18, 2012. J.A. 50a. The petition was timely filed on July 5, 2012. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The primary statutory provisions involved in this case are Sections 105(a) and 522 of the Bankruptcy Code, which are reprinted in an appendix at the end of this brief.

STATEMENT OF THE CASE

Section 522 of the Bankruptcy Code authorizes a debtor to exempt certain property from the bankruptcy estate "under . . . State or local law," so that the debtor is entitled to retain the property even if creditors remain unsatisfied. *See* 11 U.S.C. § 522. The purpose of exemptions is to allow debtors to emerge from bankruptcy with sufficient minimal property – such as their

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[1] Due to Petitioner's *in forma pauperis* status, the petition appendix in this case was not filed in booklet form. All materials from that appendix are reprinted for the Court's convenience in the joint appendix pursuant to Rule 26.1.

homesteads – that they might make a fresh start and not be left wards of the state. Accordingly, Congress has specified that exempt property may not be used to satisfy the claims of creditors except in a narrow set of enumerated circumstances. *See* 11 U.S.C. § 522(c), (k). These exceptions generally do not deprive a debtor of all exempt property even where the debtor has engaged in egregious wrongdoing. *See, e.g.*, 11 U.S.C. § 522(q)(1)(A) (capping homestead exemption at $155,675 where debtor is convicted of felony bankruptcy fraud).

In this case, the bankruptcy court acknowledged that Section 522 entitled Petitioner to a $75,000 exemption for his homestead under California law. But the court nonetheless held that Petitioner's homestead exemption should be eliminated and the property made available to "Debtor's creditors, including Trustee and his attorneys," because the court found that Petitioner had engaged in misconduct during his bankruptcy proceedings. J.A. 97a.

The bankruptcy court relied on the purported equitable authority vested in it by Section 105 of the Code. Section 105 provides that a bankruptcy court may take action "necessary or appropriate to carry out the provisions" of the Code. 11 U. S. C. § 105(a). The bankruptcy court's order plainly exceeded its authority under Section 105. Congress could have chosen to premise a debtor's entitlement to exemptions on equitable considerations, but it instead determined that even culpable debtors should not be left penniless after bankruptcy, and that those debtors would be subject to other sanctions. When the bankruptcy court substi-

tuted its own contrary judgment and eliminated Petitioner's exemption, it contravened rather than carried out the Code. This Court should reaffirm that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code," *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988), and reverse the order of the bankruptcy court.

A. Petitioner's Bankruptcy Filing

Petitioner Stephen Law, a California resident, declared bankruptcy on January 5, 2004. His primary asset was his house, which he listed as having a value of $363,348. S.A. 4a (Schedule A).[2] Relying on California's homestead exemption, Cal. Civ. Proc. Code § 704.730(b), Petitioner claimed that his equity in the home up to $75,000 was exempt from the bankruptcy estate.[3] S.A. 8a (Schedule C). The Trustee did not ob-

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[2] Oversize documents designated for the joint appendix are contained in a supplemental appendix denoted as "S.A. ___."

[3] As discussed below, *see infra* p. 18 n.5, the Bankruptcy Code both sets forth a series of exemptions defined by federal law, and allows each state to create its own exemptions. Some states, like Florida, permit an unlimited homestead exemption. *See* FLA. CONST. art. X, § 4(a). Other states, like Pennsylvania, permit debtors to take advantage of the federal homestead exemption, *see Allan v. Putnam Cnty. Nat'l Bank (In re Allan)*, 431 B.R. 580, 583 (Bankr. M.D. Pa. 2010), which is currently $22,975, 11 U.S.C. § 522(d)(1); *see* Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed Under Section 104(a) of the Code, 78 Fed. Reg. 12,089, 12,090 (Feb. 21, 2013) (adjusting dollar amount pursuant to 11 U.S.C. § 104(a)). In California, a single debtor may claim up to $75,000 of value in a homestead as exempt. Individuals 65 years

ject to Petitioner's claimed homestead exemption, and the time for doing so expired.

Petitioner's bankruptcy petition identified a 1999 tort judgment of $188,505.05 owed to Cau Min Li as his primary debt. The petition further stated that his house was subject to two mortgages. According to the petition, Petitioner owed $147,156.52 on his first mortgage, issued by Washington Mutual Bank, in Los Angeles, California; and he owed $156,929.04 on his second mortgage, issued by Lin's Mortgage & Associates, in Guangzhou, China. S.A. 9a (Schedule D). In concert with Petitioner's $75,000 homestead exemption, the liens, which totaled more than $300,000, meant that there would be no excess funds to the pay the estate's creditors in the event that the house sold for its estimated value of $363,468.

When the Trustee put Petitioner's home up for auction, pursuant to a court order of February 17, 2006, it sold for $680,000. J.A. 138a. The Trustee then entered into a court-approved settlement with Cau Min Li, who was the only creditor who timely filed a proof of claim. Under the settlement, the Trustee agreed to pay Mr. Li $120,000, and Mr. Li agreed to waive further claims against the estate. J.A. 13a (Docket entry No. 142). Mr. Li's $120,000 settlement was paid in full from the proceeds from the sale of the house. *See In re Law*, No. 2:04-bk-10052-TD (Bankr. C.D. Cal. June 17, 2009), ECF No. 354.

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and older may claim up to $175,000. Cal. Civ. Proc. Code §§ 704.710(c), 704.730.

B. The Surcharge Litigation

The proceeds from the sale of the house thus should have been more than sufficient to cover Petitioner's debts, the costs of administering the estate, and Petitioner's homestead exemption. J.A. 138a. Instead, the entirety of the surplus was consumed by administrative expenses resulting from the Trustee's challenge to the existence of the second lien on the home. In proceedings in which Petitioner predominately represented himself *pro se*, Petitioner claimed that the second mortgage secured a $168,000 personal loan he received from a woman from China named Lili Lin. J.A. 83a–84a. Asserting that this second lien did not exist, however, the Trustee commenced an adversary proceeding and secured a default judgment against Lili Lin. J.A. 88a–89a. The default judgment was vacated when a woman from China purporting to be Lili Lin filed papers through counsel in court in support of the lien. J.A. 89a.

Yet another Lili Lin, residing in Artesia, California, subsequently filed an answer and entered into a stipulated judgment with the Trustee.[4] J.A. 89a. As part of that stipulation, Lin of Artesia testified that she was acquainted with Petitioner and that in 1999, five years before Petitioner declared bankruptcy, he had asked her to lend him money in exchange for taking a second mortgage on the home, and further asked her to foreclose on the home and transfer it to Petitioner's ex-wife.

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[4] Petitioner opposed this stipulated judgment, but the bankruptcy court held that Petitioner lacked standing and approved the stipulated judgment upon the Trustee's motion. *In re Law*, No. 2:04-bk-10052-TD (Bankr. C.D. Cal. June 17, 2009), ECF No. 74.

J.A. 64a–65a & n.9. Lin of Artesia testified that she had neither lent him money nor undertaken the transaction that she claimed he proposed. *Id.* Petitioner disputed Lin of Artesia's account and claimed that she was acting in retaliation against him because of a separate, small-claims dispute between the two of them. J.A. 88a n.20.

Based on the Lin dispute, the Trustee contended that Petitioner had made false statements regarding the Lin lien and successfully moved to deny Petitioner a discharge of his debts. J.A. 40a. The Trustee also moved to surcharge (*i.e.*, eliminate) Petitioner's $75,000 homestead exemption in order to make those funds available for payments to the Trustee from the bankruptcy estate. The Trustee's motion claimed that the surcharge was justified so that the Trustee could recoup some of the expenses it had incurred – mostly attorneys' fees – in litigating the existence of the Lin lien. J.A. 7a–8a (Docket entry No. 97), 140a. The bankruptcy court authorized the surcharge, finding that Petitioner's conduct was "the direct cause of the expenses that have been incurred by" the Trustee. J.A. 140a.

Petitioner appealed, and the Bankruptcy Appellate Panel (BAP) of the Ninth Circuit reversed in an opinion on December 29, 2006. J.A. 132a–152a. The BAP explained that under the Ninth Circuit's decision in *Latman v. Burdette*, 366 F.3d 774 (9th Cir. 2004), a bankruptcy court could exercise its equitable authority – found in Section 105 of the Code – to surcharge a debtor's exemptions where "exceptional circumstances" so warranted. J.A. 149a (quoting *Latman*, 366 F.3d at 786). But the BAP found that no such exceptional circumstances existed here because although "this case

presents instances of debtor misconduct . . . , the debtor was not hiding property." J.A. 150a. "[I]t is apparent," the BAP concluded, "that the debtor was not abusing his exemptions and that the trustee was not seeking to remedy such abuse." Instead, "the court was merely shifting litigation expenses to the debtor in a fashion designed to punish the debtor for his litigation activity." J.A. 151a. The BAP "express[ed] no opinion whether specific instances of mischief by the debtor" could support a surcharge, but held there was no basis for upholding the surcharge order on the record before it. *Id.*

The BAP's order reversing the surcharge led to further proceedings on remand. Petitioner moved for the immediate payment of his $75,000 homestead exemption. J.A. 18a (Docket entry No. 193). The bankruptcy court denied the motion, finding that it lacked jurisdiction because the Trustee was at that time appealing the BAP order reversing the surcharge to the Ninth Circuit (an appeal that was ultimately unsuccessful). J.A. 20a (Docket entry No. 204).

Petitioner again appealed, and again the BAP reversed the bankruptcy court. The BAP held that the Trustee's Ninth Circuit appeal did not deprive the bankruptcy court of jurisdiction to pay Petitioner's exemption. The Court explained that "[a]n unopposed homestead exemption is analogous to a judgment" and that "once the period to object to a claimed exemption expires . . . the property claimed as exempt is exempt." *In re Law*, BAP No. CC–07–1127–DKMo, 2007 WL 7545164, at *3 (9th Cir. BAP Oct. 5, 2007). The BAP reiterated that "although the debtor's conduct toward

the bankruptcy court and the trustee had been both resistant and antagonistic," there had been no showing that an "equitable surcharge of his homestead exemption was . . . appropriate." *Id.* at *2.

Meanwhile, in the bankruptcy court, the Trustee engaged in additional discovery regarding the existence of Lin of China, during which he took a deposition of Petitioner, who continued to represent himself *pro se*. *See* J.A. 35a (Docket entry No. 307). The Trustee again moved to surcharge the exemption, and the bankruptcy court again granted the motion. J.A. 29a–30a (Docket entry No. 268), 81a–97a.

In its order, the bankruptcy court made new factual findings that Petitioner had submitted "false evidence" to the court and had "been unable to produce persuasive, credible evidence substantiating the [Lin] loan in response to Trustee's discovery requests, motions, or otherwise." J.A. 85a. Based on those findings, the court invoked *Latman* and its equitable authority to surcharge Petitioner's exempt property on the ground that Petitioner's "misconduct amounts to a fraud on the court and the debtor's creditors." J.A. 83a. The court reasoned:

> Were Debtor to receive his homestead exemption, the financial consequences of Debtor's misconduct would fall most heavily upon Debtor's creditors, including Trustee and his attorneys. A surcharge must be levied to avoid this outcome. Because the actual costs to the estate far exceed $75,000 (the exemption to which Debtor otherwise would be entitled), I find that Deb-

> tor's homestead must be surcharged in its entirety.

J.A. 97a.

The result of the surcharge order was that Petitioner's $75,000 exemption was made available to pay the remaining claims against the estate, which consisted entirely of the Trustee's claims for administrative expenses. The bankruptcy court also entered a discovery sanction under Federal Rule of Bankruptcy Procedure 7037 in the amount of $3,520 against Petitioner for having initially refused to appear at a deposition. J.A. 63a.

C. Proceedings On Appeal

The BAP affirmed. The court acknowledged that "[t]he Bankruptcy Code does not expressly authorize surcharges against a debtor's exemptions." J.A. 68a. But citing *Latman*, the BAP held that the bankruptcy court could "equitably surcharge a debtor's statutory exemptions" even in the absence of express statutory authority. *Id.* The BAP distinguished the first surcharge order from the second on the ground that the second order was not intended to punish Petitioner for litigation tactics, but was based on findings that the "preponderance of the evidence" showed that the Lin lien did not exist despite Petitioner's contentions to the contrary. J.A. 74a & n.11. The BAP held that the bankruptcy court's factual findings were not clearly erroneous and that the bankruptcy court did not abuse its discretion in imposing an equitable surcharge pursuant to Section 105. J.A. 74a.

Judge Markell filed a concurring opinion. Acknowledging that the panel was bound by *Latman*, Judge Markell "question[ed] whether *Latman* remains good policy." J.A. 79a. He observed that "[a] leading treatise has . . . noted *Latman*'s outlier status." J.A. 80a (citing 2 *Collier on Bankruptcy* ¶ 105.02[5][b], at 105-30 n.130 (Henry J. Sommer & Alan Resnick eds., 16th ed. 2009)).

The Ninth Circuit affirmed. Relying on *Latman*, it concluded that "the surcharge was calculated to compensate the estate for the actual monetary costs imposed by the debtor's misconduct, and was warranted to protect the integrity of the bankruptcy process." J.A. 52a.

Petitioner filed a petition for rehearing en banc, which was denied, J.A. 50a, and then timely filed a petition for certiorari to this Court, which was granted on June 17, 2013.

SUMMARY OF ARGUMENT

The bankruptcy court found that Petitioner's conduct warranted stripping him of his homestead exemption. But Congress did not commit a debtor's right to his homestead and other exempt property to the equitable discretion of bankruptcy courts. Instead, the Bankruptcy Code reflects Congress's longstanding policy judgment that a debtor's exempt property should be protected, even where the debtor has acted inequitably, so that the debtor and his dependents are not left wards of the state and may make a fresh start. Culpable debtors may properly be punished in other ways under the Code, but a court may not deprive a debtor of

exempt property, save in the narrow circumstances where Congress has specifically so authorized.

1. By its plain terms, Section 105 permits a bankruptcy court only to take action "necessary or appropriate to *carry out* the provisions" of the Code. 11 U.S.C. § 105(a) (emphasis added). In surcharging Petitioner's exemption, the bankruptcy court did not "carry out" the Code; it overrode the Code's express provisions. Section 522 states that "property exempted under this section is not liable ... for any debt" or "any administrative expense," including the attorneys' fees at issue here. 11 U.S.C. § 522(c), (k). These exemptions – for such property as the debtor's homestead, retirement funds, and motor vehicle – reflect Congress's determination that a debtor should be able to emerge from bankruptcy with "the basic necessities of life" and not be "left destitute and a public charge." H.R. Rep. No. 95-595, at 126 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6087. When the bankruptcy court surcharged Petitioner's homestead exemption to compensate "Debtor's creditors, including Trustee and his attorneys," J.A. 97a, the court wrongly substituted its judgment for Congress's about whether a debtor is entitled to exempt property.

2. The bankruptcy court's error is particularly clear given that Congress has specified in exhaustive detail when otherwise exempt property *may* be used to satisfy claims. *See, e.g.*, 11 U.S.C. § 522(c)(1), (c)(2)(A), (c)(2)(B), (c)(3), (c)(4), (k)(1), (k)(2), (o)(1), (o)(2), (o)(3), (o)(4), (p)(1)(A), (p)(1)(B), (p)(1)(C), (p)(1)(D), (q)(1)(A), (q)(1)(B)(i), (q)(1)(B)(ii), (q)(1)(B)(iii), (q)(1)(B)(iv).

As this Court has explained many times, "where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *Hillman v. Maretta*, 133 S. Ct. 1943, 1953 (2013) (quotation marks omitted). And as this Court recently reiterated, "the specific governs the general" in the interpretation of the Bankruptcy Code, and where the Code contains both "a general authorization" and "a more limited, specific authorization," "[t]he terms of the specific authorization must be complied with." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012).

Those canons apply with full force here. Section 105 contains only a general grant of authority to take action that would carry out the provisions of the Bankruptcy Code. Reading Section 105 to permit a bankruptcy court to eliminate exemptions whenever it concludes that the equities so warrant would make the far more detailed exceptions in Section 522 superfluous. That is not a proper interpretation of Section 105. *See FCC v. NextWave Personal Commc'ns Inc.*, 537 U.S. 293, 302 (2003) ("These latter exceptions [to the Bankruptcy Code] would be entirely superfluous if we were to read § 525 as the Commission proposes – which means, of course, that such a reading must be rejected.").

Indeed, this Court reached precisely that conclusion – a bankruptcy court's general equitable authority cannot override specific Code provisions – when it considered Section 105's predecessor statute in *D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204 (1932). Much

like the modern Section 105, the statute in *Ginsberg & Sons* granted bankruptcy courts the authority to "'make such orders . . . as may be necessary for the enforcement of the provisions of this title.'" *Id.* at 206 (quoting former 11 U.S.C. § 2(15)). The Court nonetheless held that Section 2(15) did not authorize a bankruptcy court to arrest the debtor because the Bankruptcy Code at that time contained a "general exemption of bankrupts from arrest" and a "carefully guarded exception" to that general exemption. *Id.* at 207. Precisely the same logic applies here: Section 105 does not authorize a bankruptcy court to surcharge exemptions in light of Section 522's prohibition on using exempt property and Congress's enumerated exceptions to that general rule.

3. Not only has Congress specified exceptions in Section 522, but it has even specified the precise extent to which a debtor's *misconduct* should affect exempt property. Congress was fully aware that not every debtor claiming exemptions would be free of fault, and in Section 522, Congress balanced the competing goals of punishing dishonest conduct and ensuring that debtors and their dependents do not emerge from bankruptcy with nothing.

Section 522 therefore contains no exception that grants a bankruptcy court the authority to eliminate a debtor's exempt property merely on a finding that the debtor acted inequitably, nor does it premise a debtor's entitlement to exempt property on a discharge from bankruptcy. Instead, Section 522's exceptions are carefully and narrowly drawn to address certain types of culpable behavior. *See, e.g.*, 11 U.S.C. § 522(c)(4) (ex-

empt property may be used to satisfy debts arising from student loan fraud).

Tellingly, even in cases of egregious misbehavior, Congress determined that a debtor's homestead exemption should be only *capped*, not eliminated. For example, where a debtor is convicted of a felony such as criminal bankruptcy fraud, and the bankruptcy court finds that the debtor's bankruptcy petition was an abuse of the Code, Section 522 provides only that the debtor's homestead exemption will be capped at $155,675. 11 U.S.C. § 522(q)(1)(A). And even these felon debtors are entitled to claim a larger homestead exemption where "reasonably necessary for the support of the debtor and any dependent of the debtor." *See id.* § 522(q)(2).

These exceptions show that the surcharge order here is inconsistent with the Code. Even a debtor who is *convicted of criminal bankruptcy fraud* may not have his homestead exemption reduced below $155,675. Yet the bankruptcy court deprived Petitioner of his *entire* $75,000 homestead exemption even though Petitioner has never been convicted of any crime, let alone felony bankruptcy fraud. That purported exercise of equitable discretion improperly displaced Congress's careful balancing of competing policies in Section 522.

4. In its order, the bankruptcy court also suggested that a surcharge was necessary to prevent an abuse of process. J.A. 92a, 97a. But Section 105 simply provides: "No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or

appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a).

By its plain terms, this provision is only a rule of construction. It clarifies that where the Code authorizes a party to seek relief, Section 105 should not be read to deprive the bankruptcy court of the power to act on its own if necessary to prevent an abuse of process. The provision does not entitle a bankruptcy court to override other provisions of the Code as a sanction to correct an abuse of process. Again, any other result cannot be squared with Section 522's detailed provisions specifying the precise grounds for which a debtor may be deprived of exempt property.

5. This Court has also repeatedly recognized that the existing remedies under the Code are sufficient to deter debtor misconduct and protect creditors. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 269, 278 (2010) ("[E]xpanding the availability of relief under Rule 60(b)(4) is not an appropriate prophylaxis . . . [because] '[d]ebtors and their attorneys face penalties under various provisions for engaging in improper conduct in bankruptcy proceedings.'" (quoting *Taylor v. Freeland & Kronz*, 503 U. S. 638, 644 (1992)).

The deterrents to bad faith conduct in the Code are numerous and substantial: Debtors who litigate in bad faith may be denied a discharge, such that they will remain personally liable for their debts even after the close of the bankruptcy case. *See* 11 U.S.C. § 727(a). The possibility of sanctions under the Code's equivalent of Rule 11 and Rule 37 for litigation misconduct represents another deterrent. And in extreme cases, a

debtor who commits fraud or perjury in the course of a bankruptcy proceeding may face criminal conviction.

These are the punishments that Congress made available to courts, and the bankruptcy court erred here by fashioning a sanction that the Code expressly forbids. If "existing sanctions prove inadequate," then it is a task for Congress, not a bankruptcy court, to amend the Code. *Espinosa*, 559 U.S. at 278. The judgment below should be reversed and Petitioner's homestead exemption restored.

ARGUMENT

The bankruptcy court acknowledged that Petitioner's $75,000 of equity in his homestead was exempt property to which he was entitled under Section 522 of the Bankruptcy Code. *See* J.A. 97a. The court nevertheless held that equity warranted stripping Petitioner of his $75,000 exemption and making it available to satisfy the administrative expenses of the Trustee and Trustee's counsel. Invoking Ninth Circuit precedent, the court relied upon the equitable authority found in Section 105 of the Code as the basis for depriving Petitioner of his exemption. J.A. 83a. That determination was erroneous. Both the Code's text and this Court's precedents establish that Section 105 does not allow a bankruptcy court to deprive a debtor of an exemption that Section 522 protects.

I. Stripping A Debtor Of Property That Section 522 Exempts Does Not "Carry Out" The Provisions Of The Bankruptcy Code.

The analysis in this case should begin and end with the plain text of Section 105:

> The court may issue any order, process, or judgment that is *necessary or appropriate to carry out the provisions of this title.* No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a) (emphasis added).

By its express terms, Section 105 is limited to "carry[ing] out the provisions" of the Code. *Id.*; *see also Norwest*, 485 U.S. at 206 ("[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised *within* the confines of the Bankruptcy Code." (emphasis added)). There are many situations in which a bankruptcy court might appropriately exercise power under Section 105 to "carry out" the Code. For example, Section 105 is frequently used to enter an injunction to enforce a lawfully entered order. *See, e.g.*, *Celotex Corp. v. Edwards*, 514 U.S. 300, 300 (1995). Indeed, both the Senate and House Reports for Section 105 specifically state that the purpose of Section 105 is to authorize a bankruptcy court to enter injunctions and to stay state court proceedings. H.R. Rep. No. 95-595, at 316-17 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6273-74; S. Rep. No. 95-989, at 29 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5815.

But stripping a debtor of an exemption does not "carry out" the provisions of the Bankruptcy Code. To the contrary, surcharging exemptions *overrides* the provisions in Section 522 of the Code, which expressly

prohibit using exemptions to pay debts or administrative expenses except when specific, codified circumstances are met.

A. The Surcharge Order Is Directly Contrary To Section 522's Provisions Protecting Exempt Property.

"[F]or more than two centuries," Congress has permitted debtors to exempt certain property from being paid out to creditors. *Schwab v. Reilly*, 130 S. Ct. 2652, 2664 (2010). The provisions governing exemptions today are set forth in Section 522 of the Code. Section 522 permits a debtor to exempt certain types of core property defined either by state or federal law by designating them on a schedule filed with the bankruptcy petition.[5] 11 U.S.C. § 522(b), (*l*). One of "the most venerable, most common, and most important exemptions" is the homestead exemption, which ensures that the debtor leaves bankruptcy either with his home or with sufficient proceeds from the sale of his home to obtain another home. *Owen v. Owen*, 500 U.S. 305, 312 (1991). Other common exemptions include those for the debtor's motor vehicle, retirement accounts, and personal items like clothing. 11 U.S.C. § 522(b).

As this Court has explained, when a debtor claims an exemption under Section 522, and no objection is

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[5] The Code permits states to choose whether to opt out of the federal exemptions, such that a debtor domiciled in that state may claim only state exemptions. 11 U.S.C. § 522(b)(1). Like many states, California has opted out of the federal exemptions and has made its state law exemptions exclusive for California debtors. Cal. Civ. Proc. Code §§ 703.130, 703.140.

made, it "prevent[s] the distribution" of the property to creditors. *Taylor v. Freeland & Kronz*, 503 U.S. 638, 642–43 (1992). *See Schwab*, 130 S. Ct. at 2658 ("If an interested party fails to object within the time allowed, a claimed exemption will exclude the subject property."). Specifically, Section 522(c) provides that exempt property "is not liable during or after the case for *any debt* of the debtor that arose . . . before the commencement of the case." 11 U.S.C. § 522(c) (emphasis added). And Section 522(k) further provides that exempt property "is not liable [for] payment of *any administrative expense*." *Id.* § 522(k) (emphasis added). "[A]dministrative expense[s]" include trustee's fees, attorneys' fees, and all other "actual, necessary costs and expenses of preserving the estate." *Id.* § 503(b)(1)(A).

Operating together, and subject to certain exceptions discussed in detail below, Sections 522(c) and 522(k) set forth a general rule that exempt property may not be used to satisfy a debtor's debts or the trustee's costs of administering the estate.[6] The prohibition

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[6] Additional provisions of the Code buttress this rule. Under Section 522(e), waivers of exemptions are unenforceable, as are waivers of a debtor's power to recover or avoid the transfer of exempt property. *See* 11 U.S.C. § 522(e). And Section 522(f) empowers debtors to avoid judicial liens and certain security interests that "impair[] an exemption" — that is, where the sum of the lien at issue, all other liens on the exempt property, and the amount of the exemption to which the debtor would otherwise be entitled "exceeds the value that the debtor's interest in the property would have in the absence of any liens." *Id.* § 522(f); *see Owen*, 500 U.S. at 311. This subsection "protects the debtor's exemptions, his discharge, and thus his fresh start by permitting him to avoid certain

reflects Congress's policy determination – which has been a constant feature of federal bankruptcy law since 1800[7] – that debtors should be able to leave bankruptcy with sufficient assets to make a "fresh start," even if it means that claims of creditors go unsatisfied and the trustee is left holding the bag for the costs of administering the estate. As the House Report accompanying Section 522 explained, protecting exempt property ultimately serves the public interest by ensuring that debtors do not become wards of the state:

> The historical purpose of . . . exemption laws has been to protect a debtor from his creditors, to provide him with the basic necessities of life so that even if his creditors levy on all of his non-

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liens on exempt property . . . to the extent that the property could have been exempted in the absence of the lien." 11 U.S.C. § 522 note (S. Rep. No. 95-989); *see* 4 *Collier on Bankruptcy* ¶ 522.11[1], at 522-94 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2013).

[7] *See, e.g.*, Act of Nov. 6, 1978, Pub. L. No. 95-598, 92 Stat. 2549; Act of July 1, 1898, ch. 541, 30 Stat. 544 (recognizing non-bankruptcy exemptions) (repealed 1978); Act of Mar. 2, 1867, ch. 176, 14 Stat. 517 (providing limited federal exemptions and allowing debtors to claim non-bankruptcy exemptions to the extent they exceeded federal amounts) (repealed 1878); Act of Aug. 18, 1841, ch. 9, § 3, 5 Stat. 440, 443 (exempting "necessary household and kitchen furniture" and other items at discretion of assignee, up to a maximum of $300, as well as wearing apparel of debtor and debtor's family) (repealed 1843); Act of Apr. 4, 1800, ch. 19, §§ 5, 34, 2 Stat. 19, 23, 30 (1800) (exempting apparel and bedding; additional assets exempted based on amount of creditors' recovery) (repealed 1803).

> exempt property, the debtor will not be left destitute and a public charge.

H.R. Rep. No. 95-595, at 126, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6087. Accordingly, Congress intended that Section 522 would provide debtors a relatively "unqualified" right to exemptions. Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, pt. II, at 128 (1973) (proposed § 4-503 note 2). Indeed, Congress considered the right to exempt property so important that it described Section 522 as one of "the two most important aspects of the fresh start" the Code provides, which is the "essence of modern bankruptcy law." *Id.* at 117, 125, 1978 U.S.C.C.A.N. at 6078, 6086.

Here, the bankruptcy court's decision to strip Petitioner of his homestead exemption violated Section 522 and thus cannot be justified as "carry[ing] out" the Code under Section 105. Section 522 expressly provides that Petitioner's exempt property may not be used to satisfy Petitioner's debts or the Trustee's administrative expenses. 11 U.S.C. § 522(c), (k). Yet that is exactly what the bankruptcy court acknowledged that it did here:

> Were Debtor to receive his homestead exemption, the financial consequences of Debtor's misconduct would fall most heavily *upon Debtor's creditors, including Trustee and his attorneys.* A surcharge must be levied to avoid this outcome. Because the actual costs to the estate far exceed $75,000 (*the exemption to which Debtor*

> *otherwise would be entitled*), I find that Debtor's homestead must be surcharged in its entirety.

J.A. 97a (emphasis added).

In the surcharge order, therefore, the bankruptcy court impermissibly substituted its policy judgment for Congress's. Congress concluded that debtors should emerge from bankruptcy with sufficient minimal property so that the public will not need to support them. But the bankruptcy court chose instead to take that property – which would have allowed Petitioner to obtain a home – and give it as compensation to the Trustee based on the court's notions of fairness. That was not an equitable judgment the bankruptcy court was entitled to make under Section 105 because it violated Congress's express legislative determination in Section 522.

Indeed, this Court has repeatedly held that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised *within* the confines of the Bankruptcy Code." *Norwest*, 485 U.S. at 206; *see also, e.g., Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 24–25 (2000) ("Bankruptcy courts are not authorized in the name of equity to make wholesale substitution of underlying law controlling the validity of creditors' entitlements, but are limited to what the Bankruptcy Code itself provides."); *United States v. Noland*, 517 U.S. 535, 543 (1996) ("[T]he [equity] chancellor never did, and does not now, exercise unrestricted power to contradict statutory or common law when he feels a fairer result may be obtained by application of a different rule."); *SEC v. U.S. Realty & Improvement Co.*, 310 U.S. 434, 455 (1940) ("A bankruptcy court . . . is guided

by equitable doctrines and principles except in so far as they are inconsistent with the Act."); *cf. Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 374–75 (2007) (observing that where "[n]othing in the text of [the two relevant Code provisions] (or the legislative history of either provision) limits the authority of the court to take appropriate action," taking such action is consistent with Section 105).

Accordingly, the bankruptcy court exceeded its equitable authority when it deprived Petitioner of property that Section 522 guaranteed as exempt. Surcharging Petitioner's exemption was not "necessary or appropriate to carry out" the Code; rather, it expressly overrode Section 522 of the Code.

B. Congress Specified When A Debtor Is Not Entitled To Exempt Property, And The Bankruptcy Court Was Not Entitled To Create Additional Exceptions.

It is particularly clear that the bankruptcy court's order surcharging Petitioner's homestead exemption cannot be justified under Section 105 because Congress has stated with great detail and clarity in Section 522 the circumstances in which exempt property *may* be taken from a debtor. Permitting bankruptcy courts to use Section 105 to fashion uncodified exceptions to Section 522 – as the bankruptcy court did here – would improperly upset the careful legislative balance reflected in Section 522.

"[W]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *Hillman*, 133 S. Ct. at

1953 (quotation marks omitted). That is especially true in the bankruptcy context. As this Court recently reiterated, "the specific governs the general" in the interpretation of the Bankruptcy Code, and where the Code contains both "a general authorization" and "a more limited, specific authorization," "[t]he terms of the specific authorization must be complied with." *RadLAX*, 132 S. Ct. at 2071. The "general/specific" canon "avoids . . . the superfluity of a specific provision that is swallowed by the general one" and thus implements "the cardinal rule that, if possible, effect shall be given to every clause and part of a statute.'" *Id.* (quoting *D. Ginsberg & Sons*, 285 U.S. at 208).

The applicability of the "general/specific" canon is at its zenith here. In contrast to Section 105's exceedingly "general authorization" to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," 11 U.S.C. § 105, Section 522 spells out in meticulous detail the circumstances under which a bankruptcy court may limit a debtor's exemptions. *See, e.g., id.* § 522(c)(1), (c)(2)(A), (c)(2)(B), (c)(3), (c)(4), (k)(1), (k)(2), (o)(1), (o)(2), (o)(3), (o)(4), (p)(1)(A), (p)(1)(B), (p)(1)(C), (p)(1)(D), (q)(1)(A), (q)(1)(B)(i), (q)(1)(B)(ii), (q)(1)(B)(iii), (q)(1)(B)(iv).

These exceptions balance Congress's interest in providing a debtor with a fresh start with a range of competing policy considerations. For example, Congress has determined that the claims of certain creditors, such as those entitled to domestic support, are sufficiently important that they may be paid from exempt property. *See id.* § 522(c)(1). And as discussed below, many of the exceptions pertain to the effect of a deb-

tor's culpable conduct. *See infra* Part I.C. It is undisputed that none of the exceptions codified by Congress in Section 522 applies in this case, and all of them would be superfluous if Section 105 were read to allow bankruptcy courts to deprive debtors of their exemptions whenever the courts found that equity so warranted.

Under these circumstances, "additional exceptions are not to be implied," *Hillman*, 133 S. Ct. at 1953 (quotation marks omitted), and bankruptcy courts may not use their "general authority" in Section 105 to upset Congress's specific statutory scheme in Section 522, *RadLAX*, 132 S. Ct. at 2071; *see also FCC v. NextWave Personal Commc'ns Inc.*, 537 U.S. 293, 302 (2003) ("These latter exceptions [to the Bankruptcy Code] would be entirely superfluous if we were to read § 525 as the Commission proposes – which means, of course, that such a reading must be rejected."); *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 453 (2007) ("[W]here Congress has intended to provide . . . exceptions to provisions of the Bankruptcy Code, it has done so clearly and expressly." (ellipsis in original; quotation marks omitted)).

Indeed, this is not first time this Court has had occasion to consider whether language comparable to Section 105 allows bankruptcy courts to take action contrary to the Code in the name of equitable considerations. In *D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204 (1932), this Court addressed the scope of the predecessor statute of Section 105(a), 11 U.S.C. § 2(15), which is virtually identical to Section 105(a): it granted bankruptcy courts the authority to "'make such orders, issue such process, and enter such judgments in addition to

those specifically provided for as may be necessary for the enforcement of the provisions of this title.'" *Ginsberg & Sons*, 285 U.S. at 206 (quoting former 11 U.S.C. § 2(15)).

The Court held that Section 2(15) did not authorize a bankruptcy court to issue an order directing the arrest of the officer of a bankrupt corporation, even if the officer intended to flee the jurisdiction to the detriment of creditors. The Court observed that the Bankruptcy Code generally "exempts the bankrupt from arrest upon civil process issued from a court of bankruptcy except for contempt or disobedience of its lawful orders," with a narrow exception for "bankrupts about to leave the district in order to avoid examination." *Id.* at 207. It then reasoned:

> In view of the *general exemption of bankrupts* from arrest under section 9a and the carefully guarded exception made by section 9b as to those about to leave the district to avoid examination, there is no support for petitioner's contention that the general language of section 2(15) is a limitation upon section 9(b) or grants additional authority in respect of arrests of bankrupts. *General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment.* Specific terms prevail over the general in the same or another statute which otherwise might be controlling.

Id. at 207–08 (emphasis added and citations omitted).

Precisely the same analysis applies here. In view of the general property exemptions set forth in Section 522(b), and the "carefully guarded exceptions" to those exemptions elsewhere in Section 522, Section 105(a) cannot be construed to grant a bankruptcy court additional authority to surcharge a debtor's exemption. *See RadLAX*, 132 S. Ct. at 2071 (citing *Ginsberg & Sons* for the proposition that specific provisions should control over general ones).

This Court reached the same conclusion in an analogous ERISA case, *Guidry v. Sheet Metal Workers*, 493 U.S. 365 (1990). There, the Court considered the interplay between a specific ERISA provision barring the garnishment of pension benefits as a means of collecting a judgment, and a general provision permitting a court to grant "appropriate relief." *Id.* at 371, 374. Guidry embezzled funds from his union, and the district court required him to repay those funds from his pension benefits pursuant to its general authority to provide "appropriate relief." This Court held that the district court's order was improper in light of ERISA's "express, specific congressional directive that pension benefits not be subject to assignment or alienation." *Id.* at 376. It declined "to approve any generalized equitable exception – either for employee malfeasance or for criminal misconduct – to ERISA's prohibition on the assignment or alienation of pension benefits." *Id.* This Court stressed that the statute "reflects a considered congressional policy choice, a decision to safeguard a stream of income for pensioners (and their dependents, who may be, and perhaps usually are, blameless), even if that decision prevents others from securing relief for the wrongs done them." *Id.* It noted that this restric-

tion "acts, by definition, to hinder the collection of a lawful debt," and "therefore can be defended only on the view that the effectuation of certain broad social policies sometimes takes precedence over the desire to do equity between particular parties." *Id.* Thus, the Court held that "[i]f exceptions to this policy are to be made, it is for Congress to undertake that task." *Id.*

Identical reasoning applies here. Just as ERISA's specific directive that individuals should retain their pension benefits overrides a district court's general authority to provide "appropriate relief," Section 522's specific directive that individuals should retain their homestead exemptions overrides a district court's general authority under Section 105. Section 522 represents Congress's considered policy choice to safeguard a debtor's homestead exemption, except under narrow circumstances not present here – even if that would "prevent[] others from securing relief for the wrongs done them." *Id.* The Court should respect that policy choice, and if additional exceptions to the policy are to be made, it is for Congress to undertake that task.

C. Congress Further Specified Precisely When Debtor Misconduct Warrants The Deprivation Of Exempt Property, And The Bankruptcy Court's Contrary Order Conflicts With Congress's Judgment.

Not only has Congress prohibited taking a debtor's exempt property – and specified detailed exceptions to that rule – but the exceptions that Congress has created expressly determine when a debtor's *misconduct* warrants a deprivation of exempt property. Thus,

Congress has legislated regarding the very policy considerations the bankruptcy court invoked here and found them insufficient to warrant depriving a debtor of exempt property. The bankruptcy court was not free to fashion an exception to Section 522 that Congress refused to create.

Fraudulent and Illegal Conduct. Of greatest relevance here, Congress has specified the precise scenarios under which a debtor's exempt property may be taken because of fraud or other misconduct on the part of the debtor. These provisions represent Congress's legislative judgment about how to balance the goal of ensuring that debtors are able to make a fresh start with the competing goal of punishing culpable conduct.

In crafting these exceptions, Congress notably declined to create a general exception for bad conduct. Instead, Congress chose to create a handful of specific exceptions targeting certain behavior. *See, e.g.*, § 522(c)(4) (exempt property may be used to satisfy "a debt in connection with fraud in the obtaining or providing of . . . financial assistance for . . . an institution of higher education"). And even for those debtors who engage in the most egregious conduct, Congress chose to *cap*, rather than eliminate, their exemptions. This accords with Congress's policy that a debtor – even one who has acted dishonestly or in bad faith – should emerge from bankruptcy with "the basic necessities of life" and not be "left destitute and a public charge." H.R. Rep. No. 95-595, at 126, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6087.

For instance, Congress has specified that if "the debtor has been convicted of a felony . . . , which under

the circumstances, demonstrates that the filing of the [bankruptcy] case was an abuse of the provisions of this title," the debtor's property exemptions will be capped at $155,675,[8] but *not* eliminated. 11 U.S.C. § 522(q)(1)(A). The typical "felony" that triggers Section 522(q) is bankruptcy fraud. *See, e.g., Prince v. Am. Bank of Tex.*, Civ. A. No. 11-CV-657, 2012 WL 3916481, at *4 (E.D. Tex. Sept. 7, 2012) (holding that bankruptcy fraud and perjury prosecutions capped, but did not eliminate, the debtor's exemptions under Section 522(q)(1)(A)). And Congress has imposed the same cap on exemptions for debtors whose debts arise from, among other things, "criminal act[s]" that caused "serious physical injury or death." 11 U.S.C. § 522(q)(1)(B)(iv). Yet Congress has such solicitude for the importance of the homestead exemption that even for these felon debtors, it provided that the cap should be lifted where "reasonably necessary for the support of the debtor or any dependent of the debtor."[9] *Id.* § 522(q)(2).

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[8] When Section 522(q) was enacted, the exemption cap was $125,000. Congress provided that this cap would increase according to a set formula to account for inflation. *See* Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed Under Section 104(a) of the Code, 78 Fed. Reg. 12,089, 12,090 (Feb. 21, 2013) (adjusting dollar amount pursuant to 11 U.S.C. § 104(a)).

[9] Another example of a provision that limits rather than eliminates the debtor's homestead exemption is Section 522(o). Under that provision, a debtor's homestead exemption is reduced to the extent that its "value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt." 11

Here, Petitioner is far less culpable than the individuals contemplated by Section 522(q)(1)(a). Petitioner was never charged with, let alone convicted of, bankruptcy fraud or any other crime. Yet the bankruptcy court deprived Petitioner of the *entirety* of his $75,000 homestead exemption because the court found, under a civil preponderance standard, that Petitioner had made false statements to the court that caused the Trustee and his counsel to incur additional costs. That punishment cannot be reconciled with Congress's determination that Petitioner would have been entitled to every dollar of his $75,000 exemption even in the extreme circumstances where Section 522(q) applies. Congress already balanced the competing policies and chose not to permit the punishment that the bankruptcy court imposed.

The legislative history behind these provisions confirms the point. Section 522(q) is the product of a recent, substantial revision to Section 522 in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, 119 Stat. 23, and it was intended to respond to perceived "fraud and abuse" of the homestead exemption in particular. *See* 151 Cong. Rec. 3038 (2005) (statement of Sen. Chuck Grassley) ("The[se] homestead provisions . . . will sub-

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U.S.C. § 522(o). In other words, a debtor who seeks to defraud creditors by selling non-exempt property and using it to increase the equity in the debtor's homestead prior to filing for bankruptcy may not claim that additional equity as exempt. The provision does not eliminate the debtor's homestead exemption altogether except where the entirety of the debtor's equity is attributable to fraudulently disposed non-exempt property.

stantially cut down on the abuses that might be referred to."). In adopting the capping provisions, Congress recognized that it was striking a compromise between protecting the debtor's homestead and deterring inappropriate conduct. *See* 151 Cong. Rec. 3026 (2005) (statement of Sen. Orrin Hatch) ("These provisions [in the bill] are a compromise, a balance of States rights and Federal imperatives under bankruptcy law and we must let the provision stand as written."); *see id.* at 3038 (statement of Sen. Chuck Grassley) ("These homestead provisions were delicately compromised."). That balance was undone by the bankruptcy court's surcharge order.

Exemptions and Denial of Discharge. Further confirmation that Congress did not intend a debtor's bad acts to be a basis for stripping the debtor of exempt property comes from the Code's careful distinction between surcharging a debtor's exempt property and denying the debtor a discharge from bankruptcy. One of the main benefits of bankruptcy is that, once all nonexempt funds are paid to creditors from the estate, the debtor's debts are discharged – *i.e.*, the debtor is no longer held personally liable for them. But the Code prohibits the discharge of certain debts (called "nondischargeable" debts), *see* 11 U.S.C. § 523(a), including several kinds of debts caused by the debtor's fraud or bad faith, *see, e.g.*, *id.* § 523(a)(2) (debts incurred under "false pretenses" may not be discharged); *id.* § 523(a)(4) (debts incurred by "fraud or defalcation while acting in a fiduciary capacity" may not be discharged). The Code also permits a bankruptcy court to deny a discharge of *all* debts under certain circumstances, including if the court finds that the debtor "knowingly and fraudulent-

ly" made "a false oath or account" during the bankruptcy proceeding. *See id.* § 727(a).

Critically, however, Section 522 makes clear that a debtor may retain his exempt property – including his homestead exemption – even if the debtor has non-dischargeable debts. Congress expressly provided for just two circumstances under which exempt property may be used to pay non-dischargeable debts, and neither involves the debtor's fraud. *See id.* § 522(c)(1) (providing that exempt property may be used to pay debts for child support or for taxes and custom duties (citing *id.* § 523(a)(1), (5))). By making exempt property available to pay only those two types of non-dischargeable debts, Congress indicated that exempt property should *not* be available to satisfy other kinds of non-dischargeable debts, including those debts resulting from the debtor's fraud. *See Hillman*, 133 S. Ct. at 1953 (the enumeration of exceptions means additional exceptions "are not to be implied" (quotation marks omitted)). Instead, those debts are ones that the creditor cannot satisfy with exempt property even though the debtor remains liable for them after discharge.

The Code is equally clear that where the bankruptcy court denies a discharge of *all* debts due to the debtor's fraud in the bankruptcy proceeding, *see* 11 U.S.C. § 727(a), exempt property still may not be taken to satisfy those debts. Section 727 states that a debtor should be denied a discharge, for example, where the debtor made a "false oath or account" or "presented or used a false claim" to the bankruptcy court. 11 U.S.C. § 727(a)(4)(A), (B). But as discussed above, Section 522

contains no general exception to the debtor's entitlement to his claimed exemptions merely for the debtor's bad faith conduct. Indeed, the discharge provisions expressly contemplate that a debtor will be entitled to retain exempted property even where a discharge is denied. Section 727 states that where a debtor is charged with a crime that warrants capping an exemption under Section 522(q), a discharge may be denied. *Id.* § 727(a)(12)(B) (discharge may be denied if "there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B)"). In other words, Section 727(a) provides that even when a discharge is denied, the debtor will still be entitled to exempt property to the extent that Section 522 permits. As the Commission on the Bankruptcy Laws explained in addressing the provision that ultimately became Section 522 of the Code:

> The right to the exemption is unqualified; it does not depend on *whether the debtor receives a discharge* and is *not forfeited by "bad conduct"* of the debtor.

Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, pt. II, at 128 (1973) (proposed § 4-503 note 2).

In short, when a debtor incurs debts through fraud, or engages in fraud in a bankruptcy proceeding, Congress has provided for the severe penalty of making the debts non-dischargeable. But even in those instances, Congress has determined that the debtor should be left with his exempt property. If Congress had wanted to deprive a debtor of exempt property simply upon a

showing that a denial of discharge was warranted, it would have said so. The bankruptcy court thus erred when it made that conduct the basis for denying Petitioner his homestead exemption.

Administrative Expenses. Finally, Congress's treatment of the provisions governing exemptions and administrative expenses further undermines the bankruptcy court's reasoning. Administrative expenses include the fees incurred by counsel in administering the estate. *See* 11 U.S.C. § 503(b). Congress could have created an exception allowing administrative expenses to be paid from exempt property where the bankruptcy court determined that the debtor had engaged in misconduct before the bankruptcy court. Indeed, as just explained, Congress did make such a conduct a predicate for denying the debtor's discharge. *See supra.*

But Congress created just two exceptions to the rule that exempt property "is not liable for payment of any administrative expense," and neither is relevant here. 11 U.S.C. § 522(k). Both exceptions concern scenarios in which the trustee or debtor incurs costs to recover or retain estate property to the debtor's ultimate benefit. *See id.* § 522(k)(1)–(2) (allowing exempt property to pay certain costs incurred in recovering property that the debtor is able to exempt). Congress thus decided the scenarios in which administrative expenses could be paid from exempt property, and fraudulent conduct by the debtor is not one of them. The bankruptcy court did not have the authority under Section 105 to add that exception to Congress's list.

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In sum, Congress has specified the precise circumstances – the precise kinds of debts and the precise kinds of debtor conduct – that warrant depriving the debtor of exempt property. Section 105's authorization to take action "necessary or appropriate to carry out" the Code does not give the bankruptcy court the authority to substitute its own equitable judgment for Congress's in deciding whether a debtor should be able to keep his exempt property.

II. Section 105 Does Not Permit A Court To Surcharge Exemptions Protected By Section 522 In Order To Prevent An Abuse Of Process.

In ordering that Petitioner's exemption be surcharged, the bankruptcy court also suggested that it was acting to prevent an abuse of process. J.A. 92a, 97a. That alternative rationale does not make the court's order any more proper under Section 105.

In addition to providing authorization for a court to take action to "carry out" the provisions of the Bankruptcy Code, Section 105 also sets forth the circumstances under which the court may act on its own initiative. Section 105 states in relevant part:

> No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

By its plain terms, this provision is not a free-standing grant of power but rather a rule of construction. It provides that *if* a distinct provision of the Bankruptcy Code "provid[es] for the raising of an issue by a party in interest," *then* that distinct provision should not be "construed to preclude the court from, *sua sponte*, taking" certain actions, including those necessary "to prevent an abuse of process." *Id.* The clause thus confirms that the bankruptcy court's existing authority to act *sua sponte* "to enforce or implement court orders or rules, or to prevent an abuse of process" is not restricted by other provisions of the Bankruptcy Code that grant creditors the right to raise issues. The clause does not act as a license for a bankruptcy court to override other substantive provisions of the Code in the name of preventing an abuse of process.

The legislative history confirms this textual analysis. The "carry out" first sentence of Section 105(a) was enacted in its current form in 1978. *See* Act of Nov. 6, 1978, Pub. L. No. 95-598, § 105(a), 92 Stat. 2555, 2549. But Congress did not add the "sua sponte" second sentence of Section 105(a) until 1986. *See* Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, Title II, § 203, 100 Stat. 3088, 3097. The impetus for the amendment was a Second Circuit case, *In re Gusam Restaurant Corp*, which held that a bankruptcy court was impliedly barred from *sua sponte* converting a case from Chapter 11 to Chapter 7 because the Code stated that a conversion could be made "on request of a party in interest." 737 F.2d 274, 276 (2d Cir. 1984).

Congress added the second sentence of Section 105 to overrule *Gusam* and clarify that bankruptcy courts were not barred from acting *sua sponte* simply because the Code also authorized a party to move for the relief in question. *See, e.g., In re Greene*, 127 B.R. 805, 808 (Bankr. N.D. Ohio 1991) ("The [second sentence] of § 105(b) was enacted specifically to overrule [*Gusam*], which denied the Court's right to convert a case sua sponte.") (citing Collier Pamphlet Edition 1990–1991, at 43)). The second clause of Section 105(a) clearly overrules *Gusam*; but, just as clearly, it does not constitute an affirmative grant of authority to the bankruptcy court above and beyond the first clause of Section 105(a).

Again, no other conclusion makes sense given Section 522's detailed provisions. Congress could have added an exception denying a debtor his exempt property if the court found that he abused the court's processes, but it did not. As noted above, instead the Code is clear that even if a debtor engages in misconduct sufficient to warrant a denial of discharge, the debtor's exempt property remains unaffected. Indeed, Congress has specified that even where the debtor's very filing for bankruptcy amounts to an "abuse of the provisions of the Code" due to a felony on the part of the debtor, the debtor is still entitled to retain $155,675 of exempt property. 11 U.S.C. § 522(q)(1)(A).

Those are the specific provisions – including the provisions speaking directly to abuses of the Code – that govern a bankruptcy court's authority regarding exempt property. Section 105's language does not authorize a bankruptcy court to deprive a debtor of ex-

empt property protected by Section 522 in the name of preventing an abuse of process.

III. The Punishments That Congress Has Authorized Are Sufficient To Deter Improper Conduct In A Bankruptcy Proceeding.

For all the reasons explained above, Section 105 does not authorize a bankruptcy court to deprive a debtor of exempt property that Section 522 protects. But that does not mean that the Code lacks provisions to deter dishonest behavior and protect creditors.

As this Court has twice observed, "'[d]ebtors and their attorneys face penalties under various provisions for engaging in improper conduct in bankruptcy proceedings,'" and "[t]he specter of such penalties" is sufficient to combat "the potential for bad-faith litigation tactics." *Espinosa*, 559 U.S. at 278 (quoting *Taylor*, 503 U.S. at 644; first bracket in original). In *Taylor*, and again in *Espinosa*, the parties argued that a departure from the statutory text was warranted by the concern of "improper incentives" to engage in bankruptcy fraud. But in each case, this Court examined the provisions of the Code and concluded without hesitation that the existing provisions were sufficient to deter fraud and bad-faith conduct, and if they were not, "Congress may enact . . . provisions to address the difficulties." *Taylor*, 503 U.S. at 644; *see also Espinosa*, 559 U.S. at 278 ("[T]o the extent existing sanctions prove inadequate to [the] task [of deterring fraud], Congress may enact additional provisions.").

This Court should apply the same reasoning here. As the Court observed in *Espinosa* and *Taylor*, the provisions of the Code that deter bad faith conduct are

numerous and substantial. Those provisions include (as recounted in *Taylor*):

> 11 U.S.C. § 727(a)(4)(B) (authorizing denial of discharge for presenting fraudulent claims); Rule 1008 (requiring filings to "be verified or contain an unsworn declaration" of truthfulness under penalty of perjury); Rule 9011 (authorizing sanctions for signing certain documents not "well grounded in fact and . . . warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law"); [and] 18 U.S.C. § 152 (imposing criminal penalties for fraud in bankruptcy cases).

503 U.S. at 644 (ellipsis in original).

In the first place, the Code requires that a debtor who makes false claims or statements in a bankruptcy proceeding be denied a discharge under Section 727(a) of the Code, as Petitioner was here. *See* 11 U.S.C. § 727(a)(3) (discharge denied where "the debtor has . . . falsified . . . any recorded information"); *id.* § 727(a)(4)(A) (discharge denied where the debtor "made a false oath or account"); *id.* § 727(a)(4)(B) (discharge denied where the debtor "presented or used a false claim").

The threat of denial of discharge is a serious one for the debtor because of the consequence it entails: the debtor remains personally obligated to satisfy unpaid debts. *See* 11 U.S.C. §§ 524(a), 727. Yet at the same time, as explained above, *supra at* pp. 32–35, Congress has made clear that even debtors who are denied a discharge are still entitled to retain their exempt property. They remain liable for their debts, which

represents a significant deterrent to dishonest conduct. *See Taylor*, 503 U.S. at 644. But they are permitted to retain a modicum of post-bankruptcy funds so that they are not forced to become "destitute and a public charge." H.R. Rep. No. 95-595, at 126, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6087.

Sanctions for bad faith conduct in bankruptcy proceedings may also be imposed under the Federal Rules of Bankruptcy Procedure. *See Taylor*, 503 U.S. at 644. Under Federal Rule of Bankruptcy Procedure 9011(c), which tracks Federal Rule of Civil Procedure 11(c), sanctions may be levied "upon attorneys, law firms, or parties" who engage in a variety of misconduct in connection with a bankruptcy case. *See* Fed. R. Bankr. P 9011(b)–(c). "[T]he sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation." Fed. R. Bankr. P. 9011(c)(2). In addition, Federal Rule of Bankruptcy Procedure 7037 authorizes sanctions for discovery violations pursuant to Federal Rules of Civil Procedure 37. Indeed, in this case, Petitioner was sanctioned $3,520 under this Rule. J.A. 63a. These sanctions make a debtor liable for the costs imposed, but they do not authorize the use of exempt property to satisfy them.

Finally, in extreme cases, a debtor who commits bankruptcy fraud may be criminally prosecuted under 18 U.S.C. § 152. *See Taylor*, 503 U.S. at 644. And because Rule 1008 requires that declarations be submit-

ted under penalty of perjury, a debtor who lies in such a declaration may be prosecuted for criminal perjury.

All of these sanctions, both individually and together, represent a significant deterrent to dishonest debtor conduct. More important, they are the sanctions that Congress chose to rely upon in lieu of depriving debtors of their homestead, retirement funds, and other exempt property. If these "existing sanctions prove inadequate," then it is a task for Congress, not the bankruptcy courts, to amend the Code. *Espinosa*, 559 U.S. at 278.

CONCLUSION

The judgment of the Ninth Circuit should be reversed and the case remanded for further proceedings.

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ADDENDUM

ADDENDUM — STATUTORY PROVISIONS INVOLVED

11 U.S.C. § 105(a)

§ 105. Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

* * * *

11 U.S.C. § 522

§ 522. Exemptions

(a) In this section--

(1) "dependent" includes spouse, whether or not actually dependent; and

(2) "value" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

(b)(1) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate

the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (2) and the other debtor elect to exempt property listed in paragraph (3) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (2), where such election is permitted under the law of the jurisdiction where the case is filed.

(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.

(3) Property listed in this paragraph is--

(A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately

preceding the 730-day period or for a longer portion of such 180-day period than in any other place;

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law; and

(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).

(4) For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:

(A) If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the filing of the petition in a case under this title, those funds shall be presumed to be exempt from the estate.

(B) If the retirement funds are in a retirement fund that has not received a favorable determination under

such section 7805, those funds are exempt from the estate if the debtor demonstrates that--

> (i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and
>
> (ii)(I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or
>
> > (II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such direct transfer.

(D)(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such distribution.

(ii) A distribution described in this clause is an amount that--

(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of such amount.

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except--

(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such paragraph);

(2) a debt secured by a lien that is--

(A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

(ii) not void under section 506(d) of this title; or

(B) a tax lien, notice of which is properly filed;

(3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or

(4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

(d) The following property may be exempted under subsection (b)(2) of this section:

(1) The debtor's aggregate interest, not to exceed $22,975 [FN1] in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed $3,675 [FN1] in value, in one motor vehicle.

(3) The debtor's interest, not to exceed $575 [FN1] in value in any particular item or $12,250 [FN1] in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals,

crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed $1,550 [FN1] in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value $1,225 [FN1] plus up to $11,500 [FN1] of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $2,300 [FN1] in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value $12,250 [FN1] less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive--

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless--

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to--

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed $22,975, [FN1] on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

(e) A waiver of an exemption executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this section. A waiver by the debtor of a power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this section to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer, is unenforceable in a case under this title.

(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is--

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5); or

(B) a nonpossessory, nonpurchase-money security interest in any--

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of--

(i) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

(3) In a case in which State law that is applicable to the debtor--

(A) permits a person to voluntarily waive a right to claim exemptions under subsection (d) or prohibits a debtor from claiming exemptions under subsection (d); and

(B) either permits the debtor to claim exemptions under State law without limitation in amount, except to the extent that the debtor has permitted the fixing of a consensual lien on any property or prohibits avoidance of a consensual lien on property otherwise eligible to be claimed as exempt property;

the debtor may not avoid the fixing of a lien on an interest of the debtor or a dependent of the debtor in property if the lien is a nonpossessory, nonpurchase-money security interest in implements, professional books, or tools of the trade of the debtor or a dependent of the debtor or farm animals or crops of the debtor or a dependent of the debtor to the extent the value of such implements, professional books, tools of the trade, animals, and crops exceeds $6,225 [FN1].

(4)(A) Subject to subparagraph (B), for purposes of paragraph (1)(B), the term "household goods" means--

(i) clothing;

(ii) furniture;

(iii) appliances;

(iv) 1 radio;

(v) 1 television;

(vi) 1 VCR;

(vii) linens;

(viii) china;

(ix) crockery;

(x) kitchenware;

(xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor;

(xii) medical equipment and supplies;

(xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;

(xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and

(xv) 1 personal computer and related equipment.

(B) The term "household goods" does not include--

(i) works of art (unless by or of the debtor, or any relative of the debtor);

(ii) electronic entertainment equipment with a fair market value of more than $650 [FN1] in the aggregate (except 1 television, 1 radio, and 1 VCR);

(iii) items acquired as antiques with a fair market value of more than $650 [FN1] in the aggregate;

(iv) jewelry with a fair market value of more than $650 [FN1] in the aggregate (except wedding rings); and

(v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if--

(1)(A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(1)(B) of this section.

(h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if--

(1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and

(2) the trustee does not attempt to avoid such transfer.

(i)(1) If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

(2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under

subsection (g) of this section or paragraph (1) of this subsection.

(j) Notwithstanding subsections (g) and (i) of this section, the debtor may exempt a particular kind of property under subsections (g) and (i) of this section only to the extent that the debtor has exempted less property in value of such kind than that to which the debtor is entitled under subsection (b) of this section.

(k) Property that the debtor exempts under this section is not liable for payment of any administrative expense except--

(1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and

(2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i)(1) of this section, that the debtor has not paid.

(l) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

(m) Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case.

(n) For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue Code of 1986, other than a simplified employee pension under section 408(k) of such Code or a simple retirement account under section 408(p) of such Code, the aggregate value of such assets exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a) (5), and 403(b) (8) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed $1,245,475 [FN1] in a case filed by a debtor who is an individual, except that such amount may be increased if the interests of justice so require.

(o) For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in--

(1) real or personal property that the debtor or a dependent of the debtor uses as a residence;

(2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

(3) a burial plot for the debtor or a dependent of the debtor; or

(4) real or personal property that the debtor or a dependent of the debtor claims as a homestead;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.

(p)(1) Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate $155,675 [FN1] in value in--

(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

(C) a burial plot for the debtor or a dependent of the debtor; or

(D) real or personal property that the debtor or dependent of the debtor claims as a homestead.

(2)(A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of such farmer.

(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

(q)(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate $155,675 [FN1] if--

(A) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or

(B) the debtor owes a debt arising from--

(i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;

(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;

(iii) any civil remedy under section 1964 of title 18; or

(iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.

[FN1] Dollar amount as adjusted by the Judicial Conference of the United States. See Adjustment of Dollar Amounts notes set out under this section and 11 U.S.C.A. § 104.

RESPONDENT'S BRIEF

RECORD
AND
BRIEFS

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IN THE

Supreme Court of the United States

STEPHEN LAW,
Petitioner,

v.

ALFRED H. SIEGEL, CHAPTER 7 TRUSTEE,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

Section 105(a) of the Bankruptcy Code authorizes bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title" and further provides that "[n]o provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate * * * to prevent an abuse of process." 11 U.S.C. § 105(a). This statutory grant of authority exists alongside the court's "inherent power[] * * * to fashion an appropriate sanction for conduct which abuses the judicial process." *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 45 (1991).

Debtors in bankruptcy are generally permitted to exempt certain assets from the bankruptcy estate. But dishonest debtors sometimes abuse that privilege by fraudulently seeking to retain non-exempt assets as well.

The question presented is whether a bankruptcy court may—under § 105(a) or its inherent sanctioning powers—order the equitable forfeiture of a claim to an exemption based on a debtor's egregious misconduct in seeking to wrongly withhold non-exempt assets from the estate.

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IN THE

Supreme Court of the United States

No. 12-5196

STEPHEN LAW,
Petitioner,

v.

ALFRED H. SIEGEL, CHAPTER 7 TRUSTEE,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT

STATUTORY PROVISIONS INVOLVED

The version of Section 522 applicable when Petitioner Stephen Law filed his Chapter 7 bankruptcy case is reprinted as an addendum at the end of this brief. It differs from the current version of the Code, which is included as an addendum to Law's brief.

INTRODUCTION

This case concerns a bankruptcy court's power to protect the bankruptcy process from abuse. For over a century, bankruptcy courts have held that a debtor may forfeit all or part of a claim to an exemption through his egregious misconduct in seeking to withhold non-exempt assets from the estate. Courts sometimes refer to this forfeiture as "surcharge" or "disallowance," and its effect is to help restore the estate to the position it would have been in but for

the debtor's misconduct.[1] Equitable forfeiture prevents a debtor from draining the estate of value through fraud, which courts have reasoned is necessary to preserve the integrity of the bankruptcy proceedings. In this case, the bankruptcy court entered an order finding that Law had forfeited the privilege of claiming a homestead exemption due to his fraudulent attempt to retain non-exempt equity in his home. That order was entirely permissible under the Bankruptcy Code. Two governing principles established by this Court demonstrate why.

First, the privilege of exempting property under the Bankruptcy Code to pursue a "fresh start" is intended for the " 'honest but unfortunate debtor.' " *Grogan* v. *Garner*, 498 U.S. 279, 286-287 (1991) (quoting *Local Loan Co.* v. *Hunt*, 292 U.S. 234, 244 (1934)). Law qualifies as neither. In an effort to defraud the court and his creditors, Law falsely listed a second mortgage on his residence held by a non-existent "Lili Lin of China." He caused numerous false documents to be filed with the court concerning the supposed second mortgage, and he appears to have hired two different lawyers to assert the rights of this imaginary lienholder. Law's gross misconduct forced the Trustee to spend hundreds of hours—and hundreds of thousands of dollars—untangling the fraud, disproving the existence of the second mortgage, and defending against Law's numerous appeals.

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[1] The "surcharge" nomenclature is somewhat inaccurate, insofar as courts in these cases are not levying an additional amount on the debtor, but rather finding that he has forfeited the privilege of claiming particular assets as exempt. For clarity, this brief refers to this sanction as "equitable forfeiture."

At the same time as he perpetrated this fraud, violating a host of Code provisions in the process, Law attempted to claim the homestead exemption as his absolute right. But he held no such unqualified entitlement. The bankruptcy court correctly denied Law this relief because Law failed to uphold his end of the bankruptcy bargain: that he be an honest debtor who comes to the court with clean hands.

Second, bankruptcy courts have "broad authority" under Section 105(a) of the Code and their inherent powers to "take any action that is necessary or appropriate 'to prevent an abuse of process.' " *Marrama* v. *Citizens Bank of Mass.*, 549 U.S. 365, 375 (2007). The Court reaffirmed the breadth of these powers just six years ago in *Marrama*—a case that Law relegates to a single "cf." citation in his brief. Law never explains why *Marrama* does not control here; after all, he cannot dispute that he grossly abused the bankruptcy process.

In his efforts to avoid Section 105(a), Law gives this Court no reason to depart from *Marrama*. To the contrary, he gives the Court good reason *not* to: Law's interpretation strips Section 105(a) of meaning. He ignores its broad language granting bankruptcy courts the power to issue "*any* order," "necessary *or* appropriate," "to carry out the provisions of this title," "or to prevent an abuse of process." 11 U.S.C. § 105(a) (emphases added). He jettisons the long line of precedents, both pre- and post-Code, recognizing bankruptcy courts' authority to deny equitable relief due to a debtor's or creditor's bad faith—thereby violating this Court's longstanding tenet that it "will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure." *Hamilton*

v. *Lanning*, 130 S. Ct. 2464, 2473 (2010). And he does so using muddled concepts of statutory interpretation: construing grants of authority as mere rules of construction, rewriting language of permission as language of requirement, and treating the Code's protections of debtors as inviolate while wholly disregarding analogous protections for creditors, the Trustee, and the court itself. Nothing in the Code, historical bankruptcy practice, or common sense justifies this result.

Rather, as this Court has long held, "bankruptcy courts * * * are courts of equity and 'apply the principles and rules of equity jurisprudence.'" *Young* v. *United States*, 535 U.S. 43, 50 (2002) (brackets omitted) (quoting *Pepper* v. *Litton*, 308 U.S. 295, 304 (1939)). The bankruptcy court below did just that when it refused to countenance Law's gross misconduct and fraud upon the court, the consequences of which would otherwise be born entirely by the estate. In finding that Law forfeited the privilege of claiming a homestead exemption, the court acted within its statutory and inherent authority. Its ruling should be affirmed.

STATEMENT

A. Law's Bankruptcy Petition

Law filed a voluntary Chapter 7 petition for bankruptcy in January 2004. Supplemental Joint Appendix (S.A.) 1a-2a. He averred that his residence, his primary asset, was worth barely more than $350,000. S.A. 4a (Schedule A). That valuation indicated that the home was under water because Law identified five liens on his residence totaling nearly $450,000.

S.A. 9a-10a (Schedule D).[2] He also listed approximately $6,000 in unsecured debt. S.A. 12a (Schedule F).

Under the Code, Law was obligated to file a true and accurate list of his assets and liabilities, to cooperate with the trustee in the administration of the estate, and to surrender to the trustee all property of the estate—i.e., "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1); *see id.* § 521(a)(1)(B)(i), (a)(3), (a)(4). In turn, Alfred H. Siegel, the Chapter 7 Trustee, was obligated to take possession of the property of the estate, liquidate it, and distribute the proceeds to Law's creditors in accordance with the priorities established by the Bankruptcy Code. *See id.* § 704(a)(1), (a)(5), (a)(9).

The case began as a normal Chapter 7 bankruptcy does. Creditors wishing to be paid from the estate must file a proof of claim, which is "deemed allowed" unless a party in interest objects. *Id.* §§ 501, 502(a). If there is an objection, the court must determine whether to disallow the claim on grounds enumerated in the Code. *Id.* § 502(b). In Law's case, Cau-Min Li filed a proof of claim for over $180,000, which represented a tort judgment against Law. Law objected to that claim, but the court ultimately allowed it. *See* Bankr. Dkt. Nos. 59, 64.

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[2] The liens Law listed were a first mortgage held by Washington Mutual Bank for approximately $150,000, a second mortgage (and the subject of the parties' dispute) held by Lin's Mortgage & Associates for approximately $150,000, two judgment liens for approximately $130,000 held by Cau-Min Li, and another judgment lien for almost $4,000 held by Andrew Schucker. S.A. 9a-10a.

Allowed claims are paid out of the bankruptcy estate, with any surplus in estate funds returned to the debtor. 11 U.S.C. §§ 507, 726. The debtor may also seek to "exempt" specified types of property from the bankruptcy estate. *Id.* § 522(b)(1). Section 522(d) provides the federal default rules for exemptions, but states may "opt out" of the federal regime and define their own exemptions, or afford none at all. *Id.* § 522(b)(2); *Owen* v. *Owen*, 500 U.S. 305, 308 (1991). The vast majority of states have elected to opt out and preclude debtors from invoking the federal exemptions.

California, where Law resides and filed for bankruptcy, is one such state. Cal. Civ. Proc. Code § 703.130. California law provides a "homestead exemption" for debtors, which permits them to claim $75,000 in home equity as exempt from the estate. *Id.* § 704.730(a)(1). But this exemption is a contingent one; a debtor who is allowed the exemption must reinvest the money in a new homestead within six months or it is lost. *See id.* § 704.720(b).

In his initial bankruptcy filings, Law claimed this homestead exemption for his residence. S.A. 8a (Schedule C). But the bankruptcy court found that he had forfeited the privilege of claiming the exemption because of his blatant and pervasive fraud throughout the bankruptcy proceedings. Joint Appendix (J.A.) 97a. Accordingly, the court found that Law was not entitled to exempt any equity in his home. *Id.*

B. Law's Repeated Fraudulent Filings

Law's fraud began the day he filed for bankruptcy. As required under the Bankruptcy Rules, he filed his schedules of assets and liabilities under penalty of

perjury, swearing that they were "true and correct." S.A. 17a. But Law lied. He listed a debt of approximately $150,000 that he claimed was secured by a second mortgage on his home held by "Lin's Mortgage & Associates." S.A. 9a.[3] As the Trustee would eventually discover after hundreds of hours of investigation and litigation, however, that second mortgage did not exist. It "was a fiction, meant to preserve [Law's] equity in his residence beyond what he was entitled to exempt as a homeowner, and a fraud on his creditors and the court." J.A. 92a.

On the face of his schedules, Law had no equity in his residence. His secured debts (nearly $450,000, counting the fake lien) exceeded his estimated valuation of the home (just over $350,000). S.A. 4a. Assuming the accuracy of Law's valuation, there was no equity in the home to fund a homestead exemption and there would be little benefit to creditors from a sale of the residence. Thus, the Trustee was likely to abandon the home to Law pursuant to 11 U.S.C. § 554. But Law's valuation was sorely lacking. In February 2006, Law's residence sold for $680,000. J.A. 312a. That sum should have easily satisfied all of his debts, covered the Trustee's costs, and left Law with not only his full homestead exemption, but a surplus to boot. J.A. 92a-93a. Instead, Law racked up hundreds of thousands of dollars in costs to the estate by doggedly perpetuating the fraud of the phony mortgage.

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[3] This purported second "mortgage" was instead a deed of trust. *See* S.A. 52a-55a. But for the sake of consistency, this brief refers to it as a mortgage.

Law had recorded that fake lien after Cau-Min Li filed his state-court tort action against Law—apparently in anticipation of an adverse judgment in that case. J.A. 299a, 309a-310a. To create a paper trail supporting the non-existent loan, Law solicited the assistance of a woman named Lili Lin who lived in Artesia, California ("Lili Lin of Artesia"). He asked her to accept the (already recorded) promissory note for the mortgage and a check in the amount of $168,000, and further asked that she immediately endorse the check back to him. She refused to conspire with Law in this fraud. J.A. 193a.

The Trustee discovered this only after he filed an adversary proceeding against Lili Lin of Artesia to avoid the lien that she supposedly held. At that point, rather than confess that the phony mortgage did not exist, Law contended that the Trustee was proceeding against the wrong person. Law maintained that the lien was held by a *different* woman named Lili Lin, who lived in China and spoke no English ("Lili Lin of China" or "fake Lili Lin"). J.A. 89a. And he repeated these lies again and again, to his creditors, *see* J.A. 297a, 300a-304a, to the Trustee, *see* J.A. 325a-364a, and even to the court, *see, e.g.*, J.A. 156a-167a, 169a-172a, 187a-190a, 194a-208a, 210a-216a, 220a-226a, 246a-257a, 259a-266a, 286a-291a; S.A. 3a-4a, 8a-9a, 17a, 20a-33a, 46a-55a.

The fraudulent lien was only the beginning; in Law's single-minded pursuit of retaining non-exempt equity in his home, he fought every effort the Trustee made to faithfully administer the estate. When the Trustee offered a compromise settlement of $100,000 both to satisfy Law's homestead exemption and to resolve the fake Lili Lin lien, Law refused the offer.

Cert. Pet. 7. When the Trustee entered a compromise agreement with Lili Lin of Artesia to avoid the phony mortgage, Law opposed the agreement on the ground that it violated the rights of the fake Lili Lin. J.A. 162a-163a. When the Trustee moved to sell Law's residence free and clear of all encumbrances, Law several times tried to block the Trustee's action. J.A. 9a-10a, 15a (dockets 101, 108, 159). When the Trustee entered a compromise with Cau-Min Li concerning his secured claim from the tort judgment, Law objected more than once. J.A. 13a-14a (dockets 143, 152). When the Trustee sought to depose Law, he refused to submit to a deposition and fought the Trustee's efforts to compel one. J.A. 32a (docket 291). And whenever Law lost in the bankruptcy court, he sought appellate review, forcing the Trustee to defend against over a dozen different appeals "as a direct result of Debtor's false representations." J.A. 93a-94a n.31, 315a-317a.

C. The Forfeiture Of Law's Claim To A Homestead Exemption

Based on Law's misconduct, the bankruptcy court issued an order in May 2006 finding that Law had forfeited the privilege of claiming a homestead exemption. J.A. 13a (docket 120). The Bankruptcy Appellate Panel, however, reversed. J.A. 132a-152a. It held that although the "case presents instances of debtor misconduct, obstinance, blatant ignorance of court orders and directives, animosity towards the court and the trustee, and efforts to thwart administration of the case," the court could not conclude that Law was "abusing his exemptions" because the validity of the fake Lili Lin lien had "not yet been determined." J.A. 150a.

For the next year, Law continued to aggressively press the validity of that fake lien. But his litigation tactics increasingly demonstrated that the loan was a fraud. For example, one document Law filed prompted the bankruptcy court to observe that "no plausible explanation has been furnished as to how Lili Lin of China, who purportedly speaks only Chinese and is unable to travel to the United States, was able to sign this motion on the same page as Debtor." J.A. 90a (emphasis removed). The court further noted that the motion responded to a sale order that had been issued only two days prior—"very little time for Debtor to mail a signature page to China and receive a signed copy in return." *Id.* Thus, "the most plausible inference is that Debtor signed Lili Lin of China's name himself, or asked someone else to sign it for him." *Id.*

Because it had become clear that Law was perpetrating a fraud on the court by filing false documents on behalf of the fake Lili Lin, the bankruptcy court again determined that forfeiture of Law's claim to a homestead exemption was appropriate. *See* J.A. 81a-97a. In reaching that decision, the court carefully analyzed Law's fraud. The court first determined that Law had submitted false evidence to the court in the form of a fraudulent promissory note designed to convince the court that the fake Lili Lin held the phony mortgage. J.A. 91a. The court then turned to the purported "Lili Lin of China" filings and noted that "despite her inability to speak English and her frequent lack of representation, Lili Lin of China has managed to file with this court numerous motions, declarations, and appeals *in pro per*—all written in English, without record of translation." *Id.* Based on the highly dubious circumstances surrounding these

filings, the court found it probable that Law authored these documents himself and that "no person named Lili Lin ever made a loan to [Law] in exchange for the disputed [mortgage]." J.A. 92a. Therefore, the court concluded: "The preponderance of the evidence clearly shows that the loan was a fiction, meant to preserve [Law's] equity in his residence beyond what he was entitled to exempt as a homeowner, and a fraud on his creditors and the court." *Id.*

The court recognized that Law's misconduct came at great cost to the estate. As "a direct result of [Law's] active misrepresentations to [the] Trustee and the court," the Trustee spent over 1500 hours investigating, exposing, and preventing Law's fraud, which "translat[ed] to $456,112.50 in fees." J.A. 93a, 94a. The costs of unraveling Law's fraud far exceeded the non-exempt equity in Law's residence. Yet if Law were nonetheless allowed a homestead exemption, the estate would go uncompensated for the effects of his gross misconduct. Under these extraordinary circumstances, the court ruled that Law had forfeited his ability to claim a homestead exemption. J.A. 97a.

D. The Bankruptcy Appellate Panel's Affirmance

Law appealed the bankruptcy court's ruling, and the Bankruptcy Appellate Panel affirmed. The Panel explained that "exceptional circumstances justifying a surcharge exist when a debtor engages in inequitable or fraudulent conduct that, when left unchallenged, denies creditors access to property in excess of that which is properly exempted under the Bankruptcy Code." JA. 71a. And those circumstances existed in this case, where Law had "engaged in inequi-

table conduct, bad faith, and fraud on a truly egregious scale." J.A. 72a. On these facts, the court held that equitable forfeiture was justified "[t]o protect the integrity of the bankruptcy system, and to prevent Debtor from reaping a benefit from his actions to the prejudice of his creditors." J.A. 75a.

Law appealed again, and the Ninth Circuit affirmed. It identified precedent "recognizing [the] inherent power of bankruptcy courts to equitably surcharge a debtor's exemption to protect [the] integrity of the bankruptcy process and to ensure that [a] debtor does not exempt [an] amount greater than allowed under [the] Bankruptcy Code." J.A. 52a. And it determined that the bankruptcy court properly exercised that power "because the surcharge was calculated to compensate the estate for the actual monetary costs imposed by the debtor's misconduct, and was warranted to protect the integrity of the bankruptcy process." *Id.*

Law's petition for rehearing en banc was denied. J.A. 50a. This Court then granted review.

SUMMARY OF ARGUMENT

1. Bankruptcy courts are courts of equity with broad authority to address the exigencies of cases before them. *American United Mut. Life Ins. Co.* v. *City of Avon Park, Fla.*, 311 U.S. 138, 146 (1940). This includes the power to issue necessary or appropriate orders to prevent an abuse of process, codified in Section 105(a) of the Bankruptcy Code, as well as "the inherent power of every federal court to sanction 'abusive litigation practices.' " *Marrama*, 549 U.S. at 375-376 (quoting *Roadway Express, Inc.* v. *Piper*, 447 U.S. 752, 765 (1980)). Both sources of authority sup-

port the bankruptcy court's forfeiture order in this case.

First, the plain language of Section 105(a) authorizes equitable forfeiture. That provision grants courts the power to issue "any order * * * necessary or appropriate * * * to carry out the provisions of this title * * * or to prevent an abuse of process." 11 U.S.C. § 105(a). The bankruptcy court's equitable forfeiture order fits neatly within the statutory standard. It "carr[ied] out" the provisions of the Code requiring the Trustee to collect the property of the estate; the provisions requiring Law to honestly inform the Trustee of his assets and liabilities, to cooperate with the Trustee in the administration of the estate, and to surrender all property of the estate to the Trustee; and the provisions limiting the property that Law was permitted to exempt from the estate. Equitable forfeiture was "necessary," or at the very least "appropriate," here because it enforced Law's obligations as a Chapter 7 debtor and vindicated the Trustee's faithful discharge of his fiduciary duties. It also filled a gap left in the Bankruptcy Code by remedying Law's fraud and returning money to the estate, which had been substantially depleted as a direct result of Law's egregious misconduct. Indeed, as Justice Souter recently wrote when sitting by designation on the First Circuit, "[i]f § 105(a) was not meant to empower a court to issue an order like [this] one * * *, it is hard to see what use Congress had in mind for it." *Malley* v. *Agin*, 693 F.3d 28, 30 (1st Cir. 2012).

Second, the equitable forfeiture order fell within the bankruptcy court's inherent authority to sanction Law for his misconduct during the proceedings. This authority is "governed not by rule or statute but by

the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 43 (1991) (quoting *Link* v. *Wabash R.R.*, 370 U. S. 626, 630-631 (1962)).

Third, equitable forfeiture is in keeping with historical bankruptcy practice. For over a hundred years, bankruptcy courts have denied both debtors and creditors equitable relief that they may otherwise have been permitted under bankruptcy law, but for their misconduct. And this Court has even affirmed the practice. *See Pepper*, 308 U.S. at 307-312. This history demonstrates that the bankruptcy court's equitable forfeiture order was a permissible exercise of the court's statutory and inherent powers.

2. Section 522 of the Code, which sets up the exemption scheme, does not require a contrary finding. The privilege of exempting property under Section 522(b) is one aspect of the "fresh start" the Code provides to "honest but unfortunate" debtors. *Marrama*, 549 U.S. at 374 (internal quotation marks omitted). But it is not an absolute right. Congress made exemptions conditional under the Code by providing only that the debtor "*may* exempt" certain property, rather than using stronger language mandating that the debtor *shall* be entitled to do so in all instances. Section 522(b) is not addressed to courts and contains no mandate requiring them to permit a claim to an exemption no matter the circumstances. Indeed, in *Marrama* this Court considered structurally identical language in the Code providing that a debtor "may convert" a case from Chapter 7 to Chapter 13 and concluded that nothing in that language "limits the authority of the court to take appropriate action in response to fraudulent conduct by the atypical lit-

igant who has demonstrated that he is not entitled to the relief available to the typical debtor." 549 U.S. at 374-375. Accordingly, *Marrama* held that bankruptcy courts have authority to find that a debtor has forfeited his ability to convert a case based on his misconduct. *Id.* The same result obtains here for the privilege of exempting property.

Contrary to Law's suggestion, equitable forfeiture does not conflict with Section 522(c), which protects property "exempted under this section" from being used to pay pre-petition debts, or Section 522(k), which shields exempted property from liability for the estate's administrative expenses. A debtor who forfeits the privilege of claiming an exemption based on egregious misconduct has not succeeded in exempting property "under this section" at all; thus, these provisions do not apply by their own terms.

Section 522 also cannot be read to implicitly prohibit equitable forfeiture. Law points to provisions in Section 522 that place certain restrictions on exemptions and contends that these constitute the only occasions when exemptions may be limited. But the history of these provisions—which were enacted at different points in time by different Congresses in response to discrete problems—refutes the notion that Congress intended through them to legislate globally about the exclusive universe of limitations on exemptions. And the provisions that Law relies on most heavily were enacted *after* he filed his bankruptcy petition and therefore have no bearing on this case. Because none of the specific provisions in Section 522 address how exemptions may be limited in response to a debtor's fraudulent attempt to retain non-exempt assets, bankruptcy courts may exercise

their power under Section 105(a) to order equitable forfeiture of a debtor's claim to an exemption.

3. The provisions of the Code that create punitive measures against a misbehaving debtor do not displace this power. They punish the debtor for his misconduct, but they offer no relief out of the estate to those victimized by a debtor's fraud—which is the remedy that equitable forfeiture affords. The mere existence of these other punitive measures does not usurp the court's authority to sanction the debtor in this manner. *Chambers*, 501 U.S. at 49.

For all of these reasons, the equitable forfeiture order was a lawful exercise of the bankruptcy court's authority. It should be affirmed.

ARGUMENT

I. BANKRUPTCY COURTS HAVE TWO SEPARATE SOURCES OF AUTHORITY—STATUTORY AND INHERENT—TO REMEDY FRAUD BY ORDERING EQUITABLE FORFEITURE.

Bankruptcy courts have long held general equity power to deny relief to those who seek it in bad faith. *See, e.g., American United*, 311 U.S. at 145-146; *Pepper*, 308 U.S. at 311-312. The Bankruptcy Code codifies this power in several provisions. *See, e.g.*, 11 U.S.C. §§ 707(a), 707(b), 727(a); *see also id.* § 105(a). And the Federal Rules of Bankruptcy Procedure further supplement this authority. *See, e.g.*, Fed. R. Bankr. P. 9011. On top of all this, bankruptcy courts possess the inherent sanctioning power shared by all courts. *See Marrama*, 549 U.S. at 375-376.

Accordingly, when a litigant commits a fraud upon the court or abuses the very processes meant to aid that litigant, a bankruptcy court has ample authority to remedy that misconduct. Indeed, it is one of the

oldest principles in equity that "[h]e who comes into equity must come with clean hands." 2 Spencer W. Symons, *Pomeroy's Equity Jurisprudence* § 397, at 91 (Lawbook Exchange, Ltd. 2012) (5th ed. 1941). If a debtor "seeks to set the judicial machinery in motion and obtain some remedy" but "has violated conscience, or good faith, or other equitable principle," then "the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy." *Id.* at 91-92; *see also id.* §§ 385-386, 388 (explaining the maxim that he who seeks equity must do equity).

These principles justify equitable forfeiture in this case because Law came to court without so much as a clean finger, let alone clean hands. He manipulated the bankruptcy process in attempts to defraud the estate; he lied to the court; he unnecessarily multiplied the proceedings; and he depleted estate assets in bad faith. Yet he nevertheless sought relief from the court by claiming that the subject of his fraud—his homestead—qualified for exemption. The bankruptcy court had every right to deny him that relief under its broad statutory and inherent authority.

A. Section 105(a) Authorizes Equitable Forfeiture When Necessary Or Appropriate To Carry Out The Provisions Of The Code Or To Prevent An Abuse Of Process.

Section 105(a) of the Bankruptcy Code confers broad authority on bankruptcy courts. It provides:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed

> to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process. [11 U.S.C. § 105(a).]

The bankruptcy court below acted well within its authority under Section 105(a) when it ordered that Law had forfeited the privilege of claiming a homestead exemption in light of the fraud he perpetrated on the court, the Trustee, and creditors. Rather than permit Law to withdraw the claimed $75,000 from the estate, the court deemed those funds forfeited, reimbursing the estate for a fraction of the extraordinary expenses it incurred to uncover Law's fraud. Under Section 105(a), this equitable forfeiture was necessary, or at the very least appropriate, to carry out the provisions of the Code and to prevent gross abuse of the bankruptcy proceedings.

1. a. Equitable forfeiture qualifies as "any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *Id.* That language, unlike other parts of the Code, is remarkably broad. First, it uses the term "any," a word with "an expansive meaning." *United States* v. *Gonzales*, 520 U.S. 1, 5 (1997) (quotation marks omitted). Second, Congress required only that the order be "appropriate"; that is, "suitable or fitting for a particular purpose." *Random House Webster's Unabridged Dictionary* 103 (2d ed. 2001). Finally, Congress gave courts license to "carry out the provisions of" the Code; that is, "to put into operation; execute," or "to effect or accomplish; complete" those provisions. *Id.* at 319 (defining "carry out"). Taken together, the breadth of permissible orders is apparent: the stat-

ute permits any order that is suitable or fitting to give effect to the Code.

Further confirmation of the statute's breadth comes from Congress's decision to authorize orders that are necessary *or* appropriate. It is well established that "terms connected by a disjunctive [should] be given separate meanings." *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 339 (1979). What is "appropriate" to carry out the Code therefore must be something *different* than what is "necessary" to carry out the Code. And the definition of "necessary" offers guidance as to what the difference is: "necessary" means "essential, indispensable, or requisite." *Random House Dictionary* 1284. Applying this to Section 105(a), "necessary" suggests a narrow correlation between the permissible court action and the Code's provisions: the action must be essential to the operation of those provisions. "Appropriate," by contrast, allows for any action that is "suitable" to the task, permitting a looser correlation. By choosing this language, Congress gave bankruptcy courts broad interstitial authority to fill gaps in the Code to protect the bankruptcy process. *Cf. Varity Corp.* v. *Howe*, 516 U.S. 489, 512 (1996) (interpreting statutory phrase "appropriate equitable relief" to authorize courts to provide "relief for injuries caused by violations that [the statute] does not elsewhere adequately remedy").

The drafting history of the bankruptcy laws confirms this understanding. Section 105(a)'s predecessor did *not* include the word "appropriate." *See* Bankruptcy Act of July 1, 1898, Ch. 541, § 2(15), 30 Stat. 544, 546 (authorizing only orders "as may be necessary for the enforcement of the provisions of this act"). Congress added the phrase "or appropri-

ate" in the 1978 enactment of the modern Code. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 105(a), 92 Stat. 2549, 2555. And commentators recognize that this addition made "Section 105 * * * much broader than former Section 2a(15)." 2 *Collier on Bankruptcy* ¶ 105.LH[2] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2013).

b. Equitable forfeiture falls well within the broad language of Section 105(a). It is "necessary," or at the very least "appropriate," to "carry out" a number of Code provisions, including those that:

- require a debtor to file with the court a truthful and accurate schedule of assets and liabilities, 11 U.S.C. § 521(a)(1)(B)(i);
- require a debtor to "cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title," *id.* § 521(a)(3);
- require a debtor to "surrender to the trustee all property of the estate," *id.* § 521(a)(4);
- permit a debtor to exempt from the estate only what is defined by statute, *id.* § 522(b)(1);
- require a trustee to "collect and reduce to money property of the estate," *id.* § 704(a)(1); and
- require the trustee to ensure that the debtor follows through as he represented he would concerning property securing listed debts, *id.* § 704(a)(3).

Applied here, equitable forfeiture "carr[ies] out" the fundamental principles of equity and honesty that are vital to the bankruptcy process. The Trustee was honoring his obligation to collect estate property by seeking to invalidate the fraudulent second mortgage

on Law's residence. The residence was quite valuable to the estate, but the sale of the property was jeopardized by the fake Lili Lin lien. So it was entirely reasonable for the Trustee to spend significant resources to challenge the lien to make sure the sale was successful. The equitable forfeiture order further recognized that Law had no excuse for his total abdication of responsibility under the Code. He tried to retain equity in his home far beyond his claimed homestead exemption. He actively thwarted the Trustee's efforts to collect estate property. He attempted to defraud creditors and the court itself. And he *rejected* the Trustee's offer to pay his homestead exemption and resolve the merits of the fake Lili Lin lien. Cert. Pet. 7. Under these extraordinary circumstances, the court carried out the Code by requiring that Law bear the cost of his misconduct; otherwise, the Trustee would be left to foot the bill for fulfilling his obligation to protect a valuable estate asset from Law's egregious misconduct.

Equitable forfeiture is "necessary," or at the very least "appropriate," to carry out these Code provisions. Law's misconduct deprived creditors and the estate of some of the non-exempt equity in his homestead. But the remedies expressly provided by the Code for debtor misconduct—such as denial of discharge under 11 U.S.C. § 727(a) and criminal sanctions pursuant to 18 U.S.C. § 152—would have done nothing to offset Law's fraud. *See infra* at 52-54; *Malley*, 693 F.3d at 30. Equitable forfeiture filled this gap. It brought money back into the pot and provided an appropriate remedy for this extraordinary case of debtor fraud, which had directly resulted in the substantial depletion of non-exempt estate assets. It served to enforce Law's obligations under

the Code and to vindicate the Trustee's faithful discharge of his fiduciary duties. And it was consistent with this Court's recognition that the Code "limits the opportunity for a completely unencumbered new beginning to the 'honest but unfortunate debtor.'" *Grogan*, 498 U.S. at 286-287 (quoting *Local Loan*, 292 U.S. at 244). Indeed, "[i]f § 105(a) was not meant to empower a court to issue an order like [this] one * * *, it is hard to see what use Congress had in mind for it." *Malley*, 693 F.3d at 30.[4]

c. Law seeks to avoid this conclusion by focusing myopically upon Section 105(a)'s requirement that an order "carry out" the Code's provisions. In his view, if the Code does not expressly permit a particular action, a court is powerless to take it. *See* Pet'r Br. 16-18. That argument is flawed for at least two reasons.

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[4] The overwhelming majority of lower courts to have considered the issue agree that a debtor forfeits his ability to claim exemptions to the extent he has engaged in fraud or extreme misconduct in seeking to retain nonexempt assets. *See, e.g.*, *Malley*, 693 F.3d at 28-31; *In re Onubah*, 375 B.R. 549, 553-558 (9th Cir. B.A.P. 2007); *Latman* v. *Burdette*, 366 F.3d 774, 785-786 (9th Cir. 2004); *In re Marve*, 43 F. App'x 943, 944-946 (6th Cir. 2002); *In re Yonikus*, 996 F.2d 866, 873-874 (7th Cir. 1993); *In re Nolan*, 2013 WL 3153849, at *4-*5 (Bankr. W.D.N.C. June 19, 2013); *In re Wilson*, 2012 WL 1856587, at *1 (Bankr. D.D.C. May 21, 2012); *In re Price*, 384 B.R. 407, 410-412 (Bankr. E.D. Va. 2008); *In re Hamblen*, 354 B.R. 322, 325-326 (Bankr. N.D. Ga. 2006); *In re Koss*, 319 B.R. 317, 321-323 (Bankr. D. Mass. 2005); *In re Karl*, 313 B.R. 827, 831-832 (Bankr. W.D. Mo. 2004); *In re Bogan*, 302 B.R. 524, 529-530 (W.D. Pa. 2003); *In re Stinson*, 221 B.R. 726, 728-732 (Bankr. E.D. Mich. 1998); *In re Ward*, 210 B.R. 531, 537-538 (Bankr. E.D. Va. 1997); *In re Swanson*, 207 B.R. 76, 79-81 (Bankr. D.N.J. 1997). *But see In re Scrivner*, 535 F.3d 1258, 1262-65 (10th Cir. 2008).

First, Law's interpretation would render much of Section 105 mere surplusage, thus violating the "cardinal principle of statutory construction" that a court should "give effect, if possible, to every clause and word of a statute." *Duncan* v. *Walker*, 533 U.S. 167, 174 (2001) (internal quotation marks omitted). Law does not bother to parse the text or offer an affirmative interpretation of Section 105(a). Instead he gives two examples of when a bankruptcy court might permissibly use Section 105(a): to issue an injunction to enforce a lawfully entered order and to stay state court proceedings. Pet'r Br. 17. Law's view appears to be that Section 105(a) authorizes only those actions that are essential to the operation of other provisions; that is, Section 105(a) serves only to give bankruptcy courts the procedural power *necessary* to implement those provisions. But that interpretation is unduly narrow and fails to give effect to the broad language of the statute. For one thing, it impermissibly strikes the words "or appropriate" from the statute, which, as we have explained, confer broad interstitial authority on bankruptcy courts. *See supra* at 18-20. For another, it ignores the second sentence of Section 105(a), which permits bankruptcy courts to issue orders "to prevent an abuse of process." *See infra* at 24-27. Law's interpretation therefore cannot be reconciled with the language of Section 105(a).

Second, Law rests his argument on this Court's statement in *Norwest Bank Worthington* v. *Ahlers*, 485 U.S. 197 (1988), that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." *Id.* at 206. But *Norwest* was not a Section 105 case. The question presented was whether a

bankruptcy court could disregard one of the Code's express requirements for a "fair and equitable" reorganization plan under 11 U.S.C. § 1129(b)(2)(B)(ii) (1982 ed., Supp. IV), and instead apply its own contrary view of what is "fair and equitable" under the circumstances. *See id.* at 205-206. Section 105 did not appear a single time in the Court's opinion; nor did it appear in the parties' briefing. *Norwest* therefore provides no insight into the meaning of Section 105(a).

In any event, Law's citation to *Norwest* assumes the very point that he is trying to prove: Section 105(a) of course falls "within the confines of the Bankruptcy Code"—but it is that provision's meaning that is in dispute. *Norwest* does nothing to explain the salient point: why equitable forfeiture of Law's exemption was not at least appropriate to carry out the Code. That is because the order meets this standard.

2. Equitable forfeiture falls within the bankruptcy court's statutory authority for a second, independent reason: under the second sentence of 11 U.S.C. § 105(a), the order was "necessary or appropriate * * * to prevent an abuse of process." As Justice Souter wrote, "[t]here could not be a clearer example of foiling abuse of process than a forfeiture order mitigating the effect of fraud." *Malley*, 693 F.3d at 30. Law hardly contends otherwise; before this Court, Law all but concedes the inequity of his conduct below. *See* Pet'r Br. 10, 13. That leaves him with the untenable argument that Section 105(a) is not "an affirmative grant of authority" at all, but only a "rule of construction" clarifying that bankruptcy courts can act sua sponte even when the Code authorizes a

party to seek relief. Pet'r Br. at 15, 38. Law is wrong.

This Court's precedent, the statutory text, and the drafting history of the provision all demonstrate that, at the very least, the second sentence of Section 105(a) enhances the first; that is, one way that a court may "carry out the provisions of the Code" is to take action that is "necessary or appropriate * * * to prevent an abuse of process." That is certainly how the Court read the statute in *Marrama*. There, the Court explained in no uncertain terms that Section 105(a) grants bankruptcy courts "the broad authority * * * to take any action that is necessary or appropriate 'to prevent an abuse of process.'" 549 U.S. at 375. *Marrama* directly forecloses Law's "rule of construction" reading.

So does the statutory language. If Congress had intended the second sentence of Section 105(a) to clarify only that courts are not barred from acting sua sponte where the Code authorizes a party to raise an issue, Pet'r Br. 38, it presumably would have drafted the second sentence to match the first. In other words, Congress would have written the statute to say that courts are not precluded "from, sua sponte, taking any action or making any determination that is necessary or appropriate *to carry out the provisions of this title*." But Congress did not so limit the scope of the second sentence. Instead, Section 105(a) authorizes courts more broadly to take any action that is "necessary or appropriate * * * *to prevent an abuse of process*." 11 U.S.C. § 105(a) (emphases added). In light of Congress's drafting choice, as Justice Souter reasoned in *Malley*, "it makes sense to read the second sentence's authority to prevent abuse of process as an example of what

the first sentence speaks of as action 'necessary or appropriate to carry out the provisions by this title.' " 693 F.3d at 30. Thus, in combination, the first and second sentences of Section 105(a) *do* affirmatively grant bankruptcy courts the authority to remedy abuses of process.[5]

The statute's drafting history also supports this view. Congress added the second sentence to Section 105(a) in 1986 to "recognize [bankruptcy] judges' inherent authority to control their dockets and manage cases pending before them." 2 *Collier on Bankruptcy* ¶ 105.LH[4] n.12 (quoting *Additional Bankruptcy Judgeships: Hearing Before the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary, House of Representatives*, H.R. 4128 & H.R. 4140, 99th Cong., 2d Sess. 75-76 (July 23, 1986) (statement of Honorable T. Glover Roberts)). The provision accordingly "allows a bankruptcy court to take any action on its own, or to make any necessary determination to prevent an abuse of process and to help expedite a case in a proper and justified manner." 132 Cong. Rec. S15092 (1986) (statement of Sen. Hatch).[6]

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[5] To be sure, Section 105(a) speaks in terms of what a court may do sua sponte. But if a court is granted the greater authority to act sua sponte, it must also have the lesser authority to act at the behest of a party. Indeed, the "spaciousness" of Section 105(a)'s language confirms this intention. *Malley*, 693 F.3d at 30.

[6] Law cites a lower court decision that surmised that the second sentence was added only to overrule the Second Circuit's decision in *In re Gusam Restaurant Corp.*, 737 F.2d 274, 276 (2d Cir. 1984)—but he offers no textual support or citation to legislative history for this theory. Nor does he explain how it affects the statutory analysis.

This legislative purpose is entirely consistent with the traditional understanding of the inherent powers of the bankruptcy courts. In *American United Mutual Life Insurance Co.* v. *City of Avon Park, Florida*, this Court chronicled "the range and type of the power which a court of bankruptcy may exercise in these proceedings." 311 U.S. at 146. "That power is ample for the exigencies of varying situations. It is not dependent on express statutory provisions. It inheres in the jurisdiction of a court of bankruptcy." *Id.* The second sentence of Section 105(a) thus serves to codify the traditionally broad equitable powers of bankruptcy courts: they may issue any orders that are necessary or appropriate to prevent an abuse of process.

* * *

The power to order equitable forfeiture of a debtor's claim to an exemption in extreme cases of debtor misconduct falls squarely within a bankruptcy court's statutory authority. In cases such as these where the debtor's egregious fraud has severely depleted estate assets, equitable forfeiture is appropriate (not to mention necessary) both to carry out the provisions of the Code and to prevent an abuse of process.

B. Equitable Forfeiture Also Falls Within The Bankruptcy Court's Inherent Power To Sanction The Bad-Faith Misconduct Of Litigants Before It.

Even in the absence of statutory authority, a bankruptcy court could order equitable forfeiture of a deceitful debtor's claim to an exemption pursuant to

the court's inherent sanctioning powers.[7] This is a separate source of authority not dependent on any particular statute. And it is one that Law strikingly does not even bother to address in his opening brief. As the Solicitor General explained previously in his invitation brief, "[t]he bankruptcy court's inherent authority to sanction a litigant's egregious misbehavior * * * provides an independent basis for affirming the surcharge in this case." U.S. Cert. Br. 21.

All courts have the "inherent power[] * * * to fashion an appropriate sanction for conduct which abuses the judicial process." *Chambers*, 501 U.S. at 45. Indeed, this Court recently reaffirmed this point in the bankruptcy context, emphasizing "the inherent power of every federal court to sanction 'abusive litigation practices.'" *Marrama*, 549 U.S. at 375-376 (quoting *Roadway Express*, 447 U.S. at 765).

This inherent authority is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve

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[7] In ordering equitable forfeiture in this case, the bankruptcy court below relied on *Latman*, which found that courts have authority to issue such orders pursuant to their inherent sanctioning powers. *See* J.A. 52a, 83a. Although the Trustee's Brief in Opposition did not draw attention to this aspect of the bankruptcy court's decision, the Solicitor General's invitation brief plainly identified the inherent sanctioning power as a reason to deny Law's petition, and Law responded to that argument in full in his supplemental brief. Moreover, the issue is " 'predicate to an intelligent resolution' of the question presented," *Ohio* v. *Robinette*, 519 U.S. 33, 38 (1996); namely, whether a bankruptcy court may "surcharge * * * [a] debtor's constitutionally protected homestead property," Cert. Pet. 1. Thus, this Court may properly consider the inherent sanctioning power in this case.

the orderly and expeditious disposition of cases." *Chambers*, 501 U.S. at 43 (quoting *Link*, 370 U.S. at 630-631). As part of this inherent power, a court may appropriately impose "sanctions for the fraud [a litigant] perpetrated on the court and the bad faith he displayed toward both his adversary and the court throughout the course of the litigation." *Id.* at 54. Moreover, the court may "vindicate itself and compensate [the opposing party] by requiring [the bad-faith litigant] to pay for all attorney's fees." *Id.* at 57; *see also* U.S. Cert. Br. 18-21.

In his supplemental certiorari brief, Law "d[id] not dispute" bankruptcy courts' inherent sanctioning powers. Pet'r Supp'l Cert. Br. 11. Law nonetheless argued that the lower court's order did not fall within this sanctioning power because equitable forfeiture is not a "traditional sanctions order." According to Law, a sanction imposed pursuant to the court's inherent authority can be nothing more than a fine, which is treated as a "post-petition debt that the trustee may pursue (even after discharge) in accordance with applicable collection law." *Id.* This argument has no merit.

First, Law cites no support for his contention that the bankruptcy court's inherent authority is limited to "traditional" sanctions orders. Second, he offers no definition of "traditional" sanctions orders that would exclude equitable forfeiture. Third, Law's "post-petition debt" argument fails to appreciate the practical effect of the bankruptcy court's order. The order found that Law had forfeited the privilege of claiming a homestead exemption; therefore, the $75,000 Law sought to exempt was retained as an asset of the estate. It accordingly was not a "debt" that the Trustee needs to "pursue." Instead, as es-

tate property, it may be used to compensate the Trustee for expenses incurred uncovering Law's fraud. This is an entirely appropriate sanction under the circumstances, and well within the court's inherent powers. *See, e.g., In re Hecker*, 264 F. App'x 786, 791-792 (11th Cir. 2008) (affirming equitable forfeiture of a claimed exemption under the court's inherent sanctioning power). For this reason also the bankruptcy court's equitable forfeiture order should be affirmed.

C. Equitable Forfeiture Of A Claimed Exemption Is Supported By Historical Practice.

Finally, historical bankruptcy practice confirms that bankruptcy courts have both statutory and inherent authority to order equitable forfeiture of a debtor's claimed exemption. Bankruptcy courts have long denied both debtors and creditors equitable relief to which they may otherwise have been permitted under governing bankruptcy law but for their misconduct. This Court affirmed the practice in *Pepper* v. *Litton*, and should do so again here.

1. A prime example of historical practice supporting the assertion of comparable authority is the equitable disallowance of claims. Under historical and modern practice, the claims process is similar in function to the exemption process. Creditors are permitted to file claims against the bankruptcy estate, and those claims are "allowed" unless a party in interest objects for one of the reasons enumerated in the Code. *See* 11 U.S.C. § 502. Courts have long recognized, however, that bankruptcy judges may separately disallow a claim for equitable reasons in cases of extreme misconduct. *See, e.g., Litzke* v. *Gregory*, 1 F.2d 112, 115-116 (8th Cir. 1924); *Adelphia Recovery Trust* v. *Bank of Am., N.A.*, 390 B.R. 64,

76 (S.D.N.Y. 2008); *Marrett* v. *Atterbury*, 16 F. Cas. 780, 781-782 (C.C.D. Minn. 1874).

This Court affirmed a bankruptcy court's authority to order equitable disallowance in *Pepper* v. *Litton*. As *Pepper* explained, "the bankruptcy court in passing on allowance of claims sits as a court of equity." 308 U.S. at 307. "[I]n the exercise of its equitable jurisdiction the bankruptcy court has the power to sift the circumstances surrounding any claim to see that injustice or unfairness is not done in administration of the bankrupt estate." *Id.* at 307-308.[8] More pointedly, when "there is added the existence of a planned and fraudulent scheme, * * *, the necessity of equitable relief against that fraud becomes insistent." *Id.* at 312 (quotation marks removed). That is just the case here. Law tried to commit a fraud against the court, the Trustee, and creditors. Under *Pepper*, "the necessity of equitable relief against that fraud bec[ame] insistent." *Id.* The bankruptcy court acted within its authority when, in effect, it equitably disallowed Law's claimed homestead exemption.

2. An equally long history establishes bankruptcy courts' practice of equitably disallowing a debtor's exemptions due to the debtor's bad faith or fraud. This practice differs from the present case only in timing: a court "disallows" an exemption when objection is made at the time the debtor first claims the exemption at the outset of the bankruptcy proceedings, whereas the court here found that Law had for-

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[8] *Cf. Wolf* v. *Weinstein*, 372 U.S. 633, 648 n.13 (1963) (in reorganization cases, "bankruptcy courts have consistently recognized the existence of inherent equity power to disallow or at least to reduce claims for compensation or reimbursement").

feited his claim to an exemption at a later stage of the proceedings once it became apparent that Law had abused the bankruptcy process. But the effect of both is the same: the claim to an exemption is denied on equitable grounds.

Equitable disallowance of exemptions most commonly occurs when the debtor attempts to claim an exemption for property that he has retained, but concealed from the trustee. Neither the present Code nor its previous iterations expressly provided for the disallowance of such an exemption. Yet there are "numerous cases in which fraudulent concealment of an asset has barred or revoked a debtor's discharge, *disallowed a debtor's exemption claim* or resulted in criminal sanctions." *Yonikus*, 996 F.2d at 873 (emphasis added). These cases were decided under the 1898 Bankruptcy Act as early as 1907 and continued after the enactment of the modern Code. *See In re Ansley Bros.*, 153 F. 983, 984 (E.D.N.C. 1907); *see also, e.g., In re Doan*, 672 F.2d 831, 833 (11th Cir. 1982); *Stewart* v. *Ganey*, 116 F.2d 1010, 1011 (5th Cir. 1940); *In re Aronson*, 233 F. 1022, 1022 (N.D. Ala. 1916) (citing cases). In addition, courts sometimes achieve the same result by denying a debtor leave to amend his schedules to add an exemption, even though the debtor normally may do so at any time prior to the close of the case. Denial is appropriate "on a showing of a debtor's bad faith or of prejudice to creditors." *Doan*, 672 F.2d at 833; *see also In re Ford*, 492 F.3d 1148, 1155 (10th Cir. 2007).

Accordingly, a debtor's permissive exemption (just like a creditor's permissive claim) has historically been subject to forfeiture when the debtor acts in bad faith. And this historical practice is "telling" because this Court "will not read the Bankruptcy Code to

erode past bankruptcy practice absent a clear indication that Congress intended such a departure." *Hamilton*, 130 S. Ct. at 2473 (citing cases). Indeed, contrary to showing such any such "clear indication," Congress has chosen to *expand* bankruptcy court's powers—both by adding "or appropriate" to the first sentence of Section 105(a) in 1978 and by adding the second sentence in 1986. These amendments demonstrate congressional encouragement rather than legislative abrogation. In sum, historical practice reiterates what the statutory text confirms: a bankruptcy court may order equitable forfeiture of a debtor's claim to an exemption based on the debtor's bad faith or fraudulent misconduct during the bankruptcy proceedings.

II. NO PROVISION OF THE CODE PROHIBITS EQUITABLE FORFEITURE.

Because the bankruptcy court's order countering Law's egregious misconduct fits comfortably within the court's statutory and inherent authority, Law is left contending that other provisions of the Bankruptcy Code prohibit that sanction. But his arguments proceed from the mistaken premise that the Code establishes an absolute right to exempt property. Not so. The text and history of Section 522, as well as this Court's precedents, demonstrate that a dishonest debtor who abuses the exemption provisions may forfeit his privileges under them. Nothing in Section 522 or any other Code provision directly or implicitly forecloses an equitable forfeiture order in an extraordinary case like this one.

A. Section 522 Does Not Create An Absolute Right To Exempt Property For Debtors Who Attempt To Abuse Its Provisions.

Law's objection to equitable forfeiture rests on his erroneous assumption that Section 522 creates an unqualified right to exemptions. *See, e.g.*, Pet'r Br. 23. But Section 522 does not create unyielding protection for dishonest debtors who manipulate Congress's careful balance between exempt and non-exempt property to defraud the court and creditors. Law had no absolute right to claim exemptions under Section 522, and the court acted within its authority in deeming that he had forfeited the privilege of claiming a homestead exemption.

1. Bankruptcy relief is intended to provide "honest but unfortunate" debtors with a fresh start. *Marrama*, 549 U.S. at 374 (internal quotation marks omitted). As part of this fresh start, Section 522 permits the debtor to claim certain property or interests in property as exempt from the estate. *See* 11 U.S.C. § 522(b). But that benefit—and so the permissibility of a claim to an exemption—is premised on the corresponding obligation of the debtor to disclose and "surrender[] for distribution" all property of the estate that is *not* exempt. *Local Loan*, 292 U.S. at 244.

A debtor who does not fulfill his end of that bargain enjoys no unqualified entitlement to the benefits of bankruptcy: "[I]n the same breath that we have invoked this 'fresh start' policy, we have been careful to explain that the Act limits the opportunity for a completely unencumbered new beginning to the 'honest but unfortunate debtor.'" *Grogan*, 498 U.S. at 286-287. As this Court observed more than a century ago, the bankruptcy laws would "be defective if

[they] permitted the bankrupt to experiment with [them],—to so manage and use [their] provisions as to conceal his estate, deceive or keep his creditors in ignorance of his proceeding, without penalty to him." *Birkett* v. *Columbia Bank*, 195 U.S. 345, 350 (1904), *superseded in other part by* 11 U.S.C. § 523(a)(3). The Court has accordingly construed the Code to implement Congress's judgment that bankruptcy relief is intended for debtors who invoke those protections in good faith. *See, e.g.*, *Marrama*, 549 U.S. at 374 (interpreting Code provision to exclude a bad-faith debtor because he was "not a member of the class of honest but unfortunate debtors that the bankruptcy laws were enacted to protect" (internal quotation marks omitted)); *Grogan*, 498 U.S. at 286 (deeming it "unlikely" that Congress "would have favored the interest in giving perpetrators of fraud a fresh start over the interest in protecting victims of fraud").

2. Against this background, Section 522 should not be interpreted to create an absolute right to exempt property immune from appropriate court orders under Section 105(a); instead, bad-faith debtors such as Law who ignore exemption limits and attempt to defraud the court and creditors may forfeit that benefit. The statute provides that "an individual debtor *may* exempt" property specified under state or federal law, 11 U.S.C. § 522(b) (emphasis added), but nothing in the statute strips the court of its discretion under Section 105(a) to determine whether a debtor has forfeited that privilege by abusing the exemption process. Section 522(b) does no more than establish the procedure by which a debtor may seek to claim exemptions. The provision is not addressed to courts and contains no directive requiring them to allow a claim regardless of the circumstances.

Quite the contrary: Congress signaled that the privilege of exempting property under Section 522(b) is conditional by using the term "may exempt," rather than stronger language mandating that the debtor *shall* be entitled to do so in all instances. That drafting choice indicates that the privilege "is merely presumptive." *In re Marrama*, 430 F.3d 474, 478 (1st Cir. 2005), *aff'd*, 549 U.S. 365 (2007); *see also In re Marcakis*, 254 B.R. 77, 82 (Bankr. E.D.N.Y. 2000) ("simply put, 'shall' means 'must,' something mandatory, and 'may' connotes the permissive, the possible"). Had Congress intended to codify an absolute right to exemptions, it would have used mandatory language to confer that entitlement. *Compare* 11 U.S.C. § 503(b) ("After notice and a hearing, there *shall* be allowed administrative expenses * * * .") (emphasis added); *id.* § 506(b) ("To the extent that an allowed secured claim is secured by property the value of which * * * is greater than the amount of such claim, there *shall* be allowed to the holder of such claim, interest on such claim * * * .") (emphasis added).

In fact, Congress considered—and rejected—using mandatory language to establish an unqualified right to exemptions when it enacted Section 522. A predecessor bill drafted by the Commission on the Bankruptcy Laws to the United States directed that "[a]n individual debtor * * * *shall be allowed* exemptions of property as provided in this section." Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, pt. 11, at 125 (1973) (proposed § 4-503) (emphasis added). The Commission explained that this statute would create an "unqualified" right to exempt property that "is not forfeited by 'bad conduct' of the debtor." *Id.* at 128

(proposed § 4-503 note 2). Law prominently features this quote in his brief, Pet'r Br. 21, 34—but he does not grapple with (let alone acknowledge) that Congress *rejected* this unqualified language in favor of the conditional "may exempt" text that was actually enacted in Section 522. As the text and history of the Code demonstrate, Section 522 establishes a privilege for debtors in the ordinary case who "may exempt" property—but it does not guarantee that debtors may *always* do so, even if they abuse the exemption provisions and commit fraud upon the court.

3. The Court adopted exactly this interpretation when considering an identically structured provision of the Code in *Marrama*. Just as Section 522 states that a debtor "may exempt" property, the statute at issue in *Marrama* provides that a debtor "may convert a case" from Chapter 7 to Chapter 13 "at any time." 11 U.S.C. § 706(a). This Court held that "[n]othing in th[at] text * * * limits the authority of the court to take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor." *Marrama*, 549 U.S. at 374-375. *Marrama* accordingly held that bankruptcy courts have authority under Section 105(a) and their inherent sanctioning powers to find that bad-faith debtors forfeit their right to convert by attempting to abuse the conversion process. *Id.* at 375.

The same reasoning applies here. Bad-faith debtors like Law who claim exemptions while simultaneously abusing the bankruptcy process are not "members of the class of honest but unfortunate debtors that the bankruptcy laws were enacted to protect." *Id.* at 374. And "[n]othing in the text" of Section 522, which contemplates only that a debtor may exempt

property, and not that he shall always be permitted to do so, "limits the authority of the court to take appropriate action in response to fraudulent conduct by the atypical litigant" in "extraordinary cases." *Id.* at 374-375 & n.11. Because Section 522 does not confer an absolute right to exempt property, it does not foreclose equitable forfeiture.

B. Equitable Forfeiture Does Not Contradict Section 522's Provisions Regarding Prepetition Debts And Administrative Expenses.

Law contends that equitable forfeiture is "[d]irectly [c]ontrary [t]o" Sections 522(c) and 522(k), which "set forth a general rule that exempt property may not be used to satisfy a debtor's debts or the trustee's costs of administering the estate." Pet'r Br. 18-19. But this claim of conflict is illusory.

1. By their express terms, Sections 522(c) (for preexisting debts) and 522(k) (for administrative expenses) do not apply. They afford protection only to property that the bankruptcy court recognizes as "property exempted under [Section 522]." 11 U.S.C. § 522(c); *accord id.* § 522(k); *see also Owen*, 500 U.S. at 308. When a court issues an equitable forfeiture order based on a debtor's abuse of the bankruptcy proceedings, however, the property has *not* been exempted under Section 522—and so the necessary predicate to trigger these provisions is absent.

This conclusion flows from a straightforward application of Section 105(a) and Section 522(*l*), which specifies that "[u]nless a party in interest objects, the property claimed as exempt * * * is exempt." While Section 522(*l*) "provide[s] for the raising of an issue by a party in interest," it cannot, under Section

105(a), be "construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate * * * to prevent an abuse of process"—including rejecting a claim to an exemption to counter a debtor's extraordinary misconduct in seeking to retain non-exempt assets. *See Taylor* v. *Freeland & Kronz*, 503 U.S. 638, 645 (1992) (acknowledging, but taking no position on, bankruptcy courts' reliance on Section 105 to "permit[] [them] to disallow exemptions not claimed in good faith" even when a party in interest fails to timely object). As Justice Souter observed in *Malley*, a bankruptcy court is not obligated to "recognize[e] [property] as 'exempted under this section' when its exemption would consummate a fraud on creditors by giving the debtor a greater exemption in fact than the code entitles him to claim in law." 693 F.3d at 29. In this circumstance, an equitable forfeiture order means the property is *not* exempt under Section 522(*l*).

In short, Sections 522(c) and (k) do not conflict with an equitable forfeiture order because a bad-faith debtor who forfeits his ability to invoke Section 522's protections has not succeeded in "exempt[ing] property under th[at] section" at all.

2. Moreover, these provisions do not apply even in their particulars. Forfeited funds used to pay creditors represent only the value of *non-exempt* assets, posing no conflict with Section 522(c). And forfeited funds used to compensate the trustee for extraordinary litigation costs do not qualify as administrative expenses within the meaning of Section 522(k).

In some cases, a court issues an equitable forfeiture order because the debtor has succeeded in wrongly withholding non-exempt property. *See, e.g.*, *Latman*, 366 F.3d at 784-786. This is "tantamount to claiming

an additional and unauthorized exemption." *In re Price*, 384 B.R. at 411. Equitable forfeiture accordingly returns the value of those assets to the estate by finding that the debtor has forfeited an equal amount of property that would otherwise have qualified for exemption. Payments to creditors from these forfeited funds do not fall within Section 522(c) because the funds represent the value of—and stand in for—*non-exempt* assets. Equitable forfeiture restores all parties to the position they would have been in absent the debtor's misconduct: the debtor "retain[s] the full value, but no more than the full value, of [his] permitted exemptions," and creditors may claim "access to property in excess of that which is properly exempted under the Bankruptcy Code." *Latman*, 366 F.3d at 785, 786. Because equitable forfeiture in practical effect reimburses the estate for the wrongly withheld non-exempt assets, there is no conflict with Section 522(c).[9]

In other cases, a court issues an equitable forfeiture order because the estate has incurred substantial expenses in order to prevent the debtor from wrongly withholding non-exempt property. *See, e.g.*, *In re Onubah*, 375 B.R. at 554-556. In this situation, the order compensates the estate for the extraordi-

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[9] Section 522(c) does not preclude equitable forfeiture under any reasonable interpretation, but this Court does not have to consider that provision to uphold the forfeiture order in this case. That is because Section 522(c) shields exempt property from liability for "any debt of the debtor that arose * * * *before the commencement of the case*." 11 U.S.C. § 522(c) (emphasis added). Here, however, the funds will be used only for the extraordinary expenses incurred in exposing Law's fraudulent conduct *after* the case was filed. Section 522(c) accordingly does not apply by its terms.

nary costs occasioned by the debtor's misconduct—costs that would not have been necessary had the debtor not attempted to sabotage the operation of the Code's distribution scheme. Equitable forfeiture in this circumstance does not violate Section 522(k) because the costs incurred by the estate in exposing and stopping a debtor's fraud do not qualify as "administrative expenses" as contemplated by that provision. The Code defines "administrative expenses" as "the actual, *necessary* costs and expenses of preserving the estate," 11 U.S.C. § 503(b)(1)(A) (emphasis added)—but the expenses compensated by equitable forfeiture would have been wholly *unnecessary* but for the debtor's bad faith. *See In re Swanson*, 207 B.R. at 81; *In re Nolan*, 2013 WL 3153849. Section 522(k) protects exempted property from being used to pay ordinary administrative expenses like the routine costs of liquidating assets, but it does not immunize debtors from paying for extraordinary expenses occasioned by abusive litigation conduct that unnecessarily drains the estate of value.[10] Accord-

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[10] Once the debtor attempts to abuse the exemption provisions, the trustee is duty-bound to safeguard the estate from that misconduct, and so the expenses incurred in defending against that fraud become necessary for purposes of paying for the services rendered. But for purposes of applying Section 522(k), which is intended to protect exempt property from the unavoidable administrative expenses that accrue in each and every case, the litigation costs occasioned by the debtor's misconduct can in no sense be characterized as necessary. *See Swanson*, 207 B.R. at 81 ("The expenses [incurred to address a debtor's misconduct] may be administrative expenses as between the estate and the persons who rendered services * * *, but they are not administrative expenses as between the estate and the debtors within the meaning of § 522(k).").

ingly, an equitable forfeiture order does not violate Section 522(k).

* * *

When a debtor fraudulently attempts to retain more property than Section 522 permits and forces a trustee to incur unnecessary expenses to protect the court and creditors from that fraud, equitable forfeiture does not encroach on any interest safeguarded by Sections 522(c) and 522(k). Because Law cannot force-fit the facts of this case into these provisions, he cannot show that equitable forfeiture contravenes the Code.

C. Section 522 Does Not Implicitly Prohibit Equitable Forfeiture.

Unable to demonstrate that equitable forfeiture directly contradicts any provision in Section 522, Law resorts to negative inference: Section 522 *implicitly* strips bankruptcy courts of discretion to find forfeiture of exemptions when debtors abuse those provisions, Law contends, because Congress has over the years enacted a handful of provisions limiting exemptions in *other* circumstances. Relying on a pastiche of interpretive canons, Law maintains that the circumstances addressed by the specific provisions in Section 522 constitute the *only* occasions when exemptions may be limited. Pet'r Br. 23-28. But none of the canons Law cites properly applies here.

1. a. Law invokes the canon that "the specific governs the general" to argue that "[t]he terms of the specific" provisions in Section 522 circumscribing exemptions in certain situations "must be complied with" over the general power granted by Section 105. *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012). The "general/specific"

canon applies, however, when the circumstances of the case implicate *both* statutory enactments. *See id.* at 2072. In other words, it is triggered only when the case "fall[s] within the ambit of the more specific provision." *Marx* v. *General Revenue Corp.*, 133 S. Ct. 1166, 1178 (2013) (internal quotation marks and alteration omitted). In that situation, even though the general provision "in its most comprehensive sense, would include what is embraced in the [specific provision], the particular enactment must be operative." *RadLAX*, 132 S. Ct. at 2071 (quoting *United States* v. *Chase*, 135 U.S. 255, 260 (1890)).

But this case does not "fall within the ambit of [any] specific provision" in Section 522. *Marx*, 133 S. Ct. at 1178. Law himself recognizes this. *See* Pet'r Br. 25 ("[N]one of the exceptions codified by Congress in Section 522 applies in this case."). Permitting equitable forfeiture to address Law's egregious attempt to retain non-exempt equity in his home accordingly poses no risk that the specific provisions of Section 522 "will * * * be controlled or nullified by a general [enactment]." *Morton* v. *Mancari*, 417 U.S. 535, 550-551 (1974). Because there are no "specific" statutory terms to "compl[y] with" in this case, Section 105(a) continues to govern "the cases within its general language [that] are not within the provisions of the particular enactment." *RadLAX*, 132 S. Ct. at 2071 (internal quotation marks omitted); *see also United States* v. *Energy Res. Co.*, 495 U.S. 545, 549-550 (1990) (holding that a bankruptcy court had authority to issue an order under Section 105(a) because specific provisions the government pointed to "restrict[ing] [the] bankruptcy court's authority" did not address the particular circumstances at issue in the case). Given the absence of a relevant "specific" pro-

vision, the "general/specific" canon lends no support to Law's interpretation of Section 522.[11]

The statute at issue in *D. Ginsberg & Sons* v. *Popkin*, 285 U.S. 204 (1932), provides a useful contrast. *Ginsberg & Sons* concerned a "provision of the Bankruptcy Act [that] prescribed in great detail the procedures governing the arrest and detention of bankrupts about to leave the district to avoid examination." *RadLAX*, 132 S. Ct. at 2071 (describing case). It held that courts could not circumvent those carefully designed procedures by premising arrest on a general provision granting power to issue "necessary" orders. *See Ginsberg & Sons*, 285 U.S. at 206-208. That "general language" could not confer "additional authority in respect of arrests of bankrupts" because the "matter [was] *specifically dealt with* in another part of the same enactment." *Id.* at 208 (emphasis added). Permitting the court to bypass the procedures Congress had mandated "would violate the cardinal rule that, if possible, effect shall be given to every clause and part of a statute." *Id.*

Here, in contrast, no provision in Section 522 "specifically deal[s] with" a bankruptcy court's authority

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[11] That makes this case easily distinguished from *Guidry* v. *Sheet Metal Workers*, 493 U.S. 365 (1990). *Guidry* held that courts could not rely on a general power to issue "appropriate relief" to "overrid[e] an express, specific congressional directive that pension benefits not be subject to assignment or alienation." *Id.* at 376. In contrast, the Bankruptcy Code contains no "express, specific" provision directing that the privilege of exempting property cannot be forfeited; instead, Section 522 is structured just like the provision in *Marrama* that this Court held *permits* forfeiture. *See Marrama*, 549 U.S. at 374-375. Because no specific statutory enactment applies to the circumstances of this case, *Guidry*'s analysis is wholly inapplicable.

to counter a debtor's abuse of the exemption process by ordering forfeiture of the claim to an exemption. The bankruptcy court did not invoke a general power in efforts to avoid specific statutory prescriptions governing Law's misconduct because no specific provision addresses it. The bankruptcy court thus properly relied on the general provision of equitable powers in Section 105(a).[12]

b. Nor can Law establish that the use of equitable forfeiture to counter abuse of the exemption process results in "the superfluity of a specific provision that is swallowed by the general one." *RadLAX*, 132 S. Ct. at 2071. None of the specific enactments in Section 522 aim at a debtor who attempts to defraud the estate and abuse the bankruptcy proceedings by wrongly withholding non-exempt assets. Recognizing a court's authority to find forfeiture to remedy such abuse does not "swallow" statutory provisions that deal with entirely different situations; they remain fully operative as applied to the circumstances they address.

That conclusion carries even more force given that the specific provisions in Section 522 are *mandatory* limits on exemptions, whereas equitable forfeiture is a *discretionary* sanction. The specific provisions in

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[12] Law notes that the general provision at issue in *Ginsberg & Sons* was Section 105(a)'s predecessor, but he declines to mention that the modern Section 105(a) is a substantial departure from its predecessor. As previously noted, Section 105(a)'s predecessor did not refer to granting "appropriate" orders, nor did it mention "abuse[s] of process"; thus *Ginsberg & Sons* offers no guidance on how to interpret and apply Section 105's grant of authority for bankruptcy courts to "tak[e] any action * * * necessary or appropriate to * * * prevent an abuse of process."

Section 522 represent situations when Congress wanted exemptions to be limited automatically—and they have this effect notwithstanding the discretionary authority conferred by Section 105(a). For example, a bankruptcy court might not always exercise its discretion under Section 105(a) to limit exemptions in cases involving domestic support obligations, but Congress assured that result by enacting Section 522(c)(1). This provision and the others like it are not rendered superfluous by a bankruptcy court's discretionary authority to find forfeiture of exemptions because they tell a court what it *must* do in the specific circumstances they address. *Cf. Marx*, 133 S. Ct. at 1177 (noting that a provision is not redundant if Congress intended it to "remove doubt" about specific circumstances).

In enacting these provisions mandating limits on exemptions in highly specific situations, Congress gave no reason to think it intended to otherwise displace bankruptcy courts' discretion to correct abuses of process. "[W]hen two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *J.E.M. AG Supply, Inc.* v. *Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 143-144 (2001) (internal quotation marks omitted). And "the unadorned words" of a broad grant of authority should not be construed as "in some way limited by implication" based on a narrower statutory provision when "giving effect to both * * * would not render one or the other wholly superfluous." *Connecticut Nat'l Bank* v. *Germain*, 503 U.S. 249, 253-254 (1992). In sum, the mandatory limits on exemptions in Section 522 and the discretionary authority to find equitable forfeiture of claims to exemptions in Section 105(a)

play different roles in the statutory scheme—with neither substituting for or supplanting the other.

2. Law also relies on the tenet that "[w]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *Hillman* v. *Maretta*, 133 S. Ct. 1943, 1953 (2013). But his reliance on that canon proceeds from the mistaken premise that there exists a general prohibition on a bankruptcy court's ability to order forfeiture of claims to exemptions. As already noted, Section 522 does not create an unqualified right to exempt property. *See supra*, at 34-38. Thus, the provisions that limit protection for exempted assets provide no insight into—and no restriction on—whether a court should recognize those assets as properly exempted in the first place. In short, Law's argument is "circular" because it "assumes that [a specific statutory provision] is an exception to a [general] bar," when the "question, after all, is whether [there] is in fact a bar." *Barnhart* v. *Peabody Coal Co.*, 537 U.S. 149, 167 (2003).

Law cannot escape this conclusion by emphasizing that a handful of provisions in Section 522 limiting protection for exempt assets address specific instances of debtor misconduct. Pet'r Br. 28-36. This Court does "not read the enumeration of one case to exclude another unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it," *Barnhart*, 537 U.S. at 168—and that is not a fair inference here. Nothing in the text or history of the Code signals Congress's intent for those provisions to occupy the field of possible limitations on exemptions. The more reasonable inference is that Congress was focused on finding solutions to particu-

lar problems, with no intent to condemn a bankruptcy court's discretionary authority to issue necessary or appropriate orders addressing *different* problems.

Law spills considerable ink discussing Sections 522(*o*) and 522(q), which cap a debtor's homestead exemption based on specified pre-petition misconduct. But these provisions did not exist when Law filed for bankruptcy in January 2004—so they say nothing about the propriety of the equitable forfeiture order issued here, which must be measured against the version of the Code that governs this case. Indeed, Congress specifically declined to make Sections 522(*o*) and 522(q) applicable to pending cases. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, § 1501(b)(2), 119 Stat. 23, 216. Thus, even if this Court indulged Law's supposition that Congress intended the misconduct provisions in BAPCPA to constitute the sole circumstances when exemptions may be restricted on the basis of fraud, that displacement of Section 105 and of the court's inherent authority would govern only post-BAPCPA cases.

But even if those provisions applied to this case, Law's argument is inherently flawed. Congress enacted Sections 522(*o*) and 522(q) along with a slate of other reforms to "restrict[] the so-called 'mansion loophole,' " under which wealthy debtors could take advantage of state laws providing for unlimited homestead exemptions to shield "virtually all of the equity in their homes." H.R. Rep. No. 109-31, at 15-16. Law rightly points out that these provisions were "delicately compromised." Pet'r Br. 32 (quoting 151 Cong. Rec. 3038 (statement of Sen. Grassley)). Some members of Congress "offered amendments that would have placed an overall limit on State

homestead exemptions, or repealed State opt-out." H.R. Rep. No. 109-31, at 591. Others "objected strenuously to a Federal ceiling preempting their States' unlimited exemptions" and "agreed to the provision only when it was modified to its current version, in which the Federal cap applies only to people engaging in fraud and people who purchase property shortly before filing for bankruptcy." *See* 151 Cong. Rec. S1892 (statement of Sen. Feingold).

What is missing entirely from the compromise, however, is any indication that Congress meant to address fraud outside the context of generous state homestead provisions or supplant a court's authority to correct abuse of the bankruptcy proceedings through equitable forfeiture. In enacting Sections 522(*o*) and 522(q), Congress was not attempting to set forth all the permissible limitations on exemptions; it was simply closing a particular loophole. There is no indication that Congress considered the propriety of forfeiture to address Law's misconduct "and meant to say no to it"; instead, this "is nothing more than a case unprovided for." *Barnhart*, 537 U.S. at 169.

3. In any event, the canons Law invokes are simply "indication[s] of statutory meaning that can be overcome by textual indications that point in the other direction," *RadLAX*, 132 S. Ct. at 2072—and there is ample indication that Congress did not intend the specific provisions in Section 522 to constitute the sole situations when exemptions may be limited.

First, Section 522(b)(2) authorizes states to opt out of the federal exemption scheme and instead set exemptions—and the limits on exemptions—as a matter of state law so long as there is no direct conflict with any provision of the Code. As this Court has

explained, "[n]othing in subsection (b) (or elsewhere in the Code) limits a state's power to restrict the scope of its exemptions; indeed, it could theoretically accord no exemptions at all." *Owen*, 500 U.S. at 308. Congress's endorsement of state opt outs indicates that it did not intend Section 522 to provide a comprehensive scheme of limitations on exemptions.

Second, the provisions on which Law relies are scattered throughout Section 522 and were enacted at different times by different Congresses—which belies any notion that they are intended to work together as an exhaustive legislative pronouncement on how exemptions may be restricted. *See, e.g.*, *Perlin* v. *Hitachi Capital Am. Corp.*, 497 F.3d 364, 370 (3d Cir. 2007) (declining to reason by negative inference from provisions of Bankruptcy Code enacted at different times because there was no indication Congress intended them to "go hand in hand" (internal quotation marks omitted)). Some of the provisions Law cites were enacted 35 years ago as part of the Bankruptcy Reform Act of 1978, 92 Stat. 2590. *See* 11 U.S.C. § 522(k)(1), (k)(2). Others were amended to their current language by the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 453(b), 98 Stat. 333, 375. *See* 11 U.S.C. § 522(c)(2)(A), (c)(2)(B). Still others did not appear in the Code until 1990. *See* 11 U.S.C. § 522(c)(3) (added by Crime Control Act of 1990, Pub. L. No. 101-647, § 2522(b), 104 Stat. 4789, 4866). Others were enacted in 2000. *See* 11 U.S.C. § 522(c)(4) (added by College Scholarship Fraud Prevention Act of 2000, Pub. L. No. 106-420, § 4, 114 Stat. 1867, 1868). And, as discussed, Congress most recently added additional limitations on exemptions as part of BAPCPA, 119 Stat. 55, 81-82, 96-97. *See*

11 U.S.C. § 522(c)(1), (*o*)(1), (*o*)(2), (*o*)(3), (*o*)(4), (p)(1)(A), (p)(1)(B), (p)(1)(C), (p)(1)(D), (q)(1)(A), (q)(1)(B)(i), (q)(1)(B)(ii), (q)(1)(B)(iii), (q)(1)(B)(iv).

Cobbling these provisions together, Law argues they constitute the exclusive universe of limitations on exemptions. But that is not a fair inference. The history of the provisions suggests that Congress was focused on addressing discrete problems at discrete points in time, with no broader ambition to legislate globally about forfeiture of exemptions. *See Varity Corp.*, 516 U.S. at 511 (interpreting ERISA provision as "reflecting a special congressional concern" with the subject matter of the provision, without necessarily "intend[ing] that section to contain the exclusive set of remedies for every kind of fiduciary breach").

Third, bankruptcy courts have long exercised their authority to address abuses of the exemption process, *see supra* at 32, and Congress gave no indication it intended to displace that power in enacting Section 522. This Court does not generally rely on negative implication to depart from historical bankruptcy practice or to read limitations into a court's inherent authority. *See Hamilton*, 130 S. Ct. at 2473; *Chambers*, 501 U.S. at 47. Because nothing in Section 522's text or history affirmatively suggests that Congress intended to foreclose a court's ability to protect the integrity of the bankruptcy process through equitable forfeiture, the Court should conclude that this discretionary remedy remains available.

* * *

Law's suggestion that Section 522 implicitly precludes equitable forfeiture is not just incorrect, but also ironic, given that a debtor who abuses those

provisions by fraudulently attempting to retain more than they permit is himself "improperly upset[ting] the careful legislative balance reflected in Section 522." Pet'r Br. 23. Equitable forfeiture is a necessary and appropriate remedy to right this wrong—and nothing in Section 522 says otherwise.

III. THE EXISTENCE OF PUNITIVE MEASURES UNDER THE CODE DOES NOT PRECLUDE EQUITABLE FORFEITURE.

Law contends that other provisions penalizing misconduct in bankruptcy proceedings "are the sanctions that Congress chose to rely upon in lieu" of equitable forfeiture. Pet'r Br. 42. But once again, his reasoning by negative inference falls flat. The fact that other provisions of the Code penalize a debtor for his misconduct does not abrogate a bankruptcy court's power to order other appropriate relief when it deems the enumerated penalties inadequate. Law must point to "a much clearer expression of purpose" than the mere existence of other sanctions to demonstrate congressional intent to disapprove equitable forfeiture. *Link*, 370 U.S. at 631-632.

Tellingly, Law never explains how his reasoning squares with this Court's decision in *Chambers*. There, the Court made clear that courts are not "forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under the statute or the Rules. * * * [I]f in the informed discretion of the court, neither the statute nor the Rules are up to the task, the court may safely rely on its inherent power." 501 U.S. at 50.

None of the other penalties Law points to are "up to the task" of fully remedying a debtor's fraudulent at-

tempt to retain non-exempt property. As previously discussed, *see supra* at 21, remedies such as a denial of discharge or criminal sanctions may punish a debtor for misconduct, but they "add nothing to the pot for listed creditors, who would otherwise bear the brunt of the fraud." *Malley*, 693 F.3d at 30. As such, they do not make the victims of the fraud whole, nor do they attempt to do so. Moreover, they are qualitatively different than the equitable forfeiture imposed here, which is designed to protect the integrity of the proceedings and help ensure the Trustee does not pay out of pocket for fulfilling his duty to expose and prevent fraud. *See Latman*, 366 F.3d at 783 (denial of discharge and equitable forfeiture "serve[] separate purposes and [ar]e aimed at enforcing distinct rights under the Bankruptcy Code").[13]

Similarly, monetary sanctions under Rule 9011 or the civil contempt power are not always adequate to redress abuse of the exemption provisions. Many debtors are judgment-proof, making any such order a hollow remedy. And even if the estate *could* eventually collect from the debtor, there is no reason to think Congress intended to delay access to that remedy or impose additional cumbersome procedures be-

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[13] Law argues that "[i]f Congress had wanted to deprive a debtor of exempt property simply upon a showing that a denial of discharge was warranted, it would have said so." Pet'r Br 34-35. But once again, his attempt to reason by negative inference is unavailing. Although a debtor may be able to exempt property even if he is denied a discharge, nothing in the Code mandates that he must *always* be able to do so. Congress properly left it to bankruptcy courts to determine in their discretion on a case-by-case basis when gross abuse of the bankruptcy proceedings warrants the equitable forfeiture of a claim to an exemption—either instead of, or in addition to, a denial of discharge.

fore granting relief. Notably, the debtor's post-petition assets would not be protected against this kind of sanction, which could be used to attach a lien to a debtor's assets, including any dwelling purchased with the homestead exemption. Section 105(a) and the court's inherent powers are "surely adequate to authorize the immediate" forfeiture of claims to exemptions "in lieu of a[n] * * * order that merely postpones the allowance of equivalent relief and may provide a debtor with an opportunity to take action prejudicial to creditors." *Marrama*, 549 U.S. at 375; *see also, e.g.*, *In re Piazza*, 719 F.3d 1253, 1262 (11th Cir. 2013) (Because "[b]ad-faith bankruptcy filings significantly burden the legal system in general and bankruptcy courts in particular," courts "should not artificially limit the tools Congress has given bankruptcy judges to protect their jurisdictional integrity." (internal quotation marks omitted)).

In resisting this conclusion, Law relies on *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), and *United Student Aid Funds Inc.* v. *Espinosa*, 559 U.S. 260 (2010)—but the analysis in those cases is inapplicable here. In both *Taylor* and *Espinosa*, this Court declined to "depart[] from the [Code's] statutory text," Pet'r Br. 39, based on policy concerns about creating improper incentives for debtors, *see Taylor*, 503 U.S. at 642-644; *Espinosa*, 559 U.S. at 273-275, 278-279. Unlike the petitioners in *Taylor* and *Espinosa*, the Trustee here is not asking this Court to "depart[] from the statutory text" to combat "improper incentives," Pet'r Br. 39; instead, he is asking the Court to *rely on* the statutory text in Section 105(a), as well as a bankruptcy court's inherent authority, to uphold the court's power to combat actual fraud and abuse.

Law is therefore wrong to suggest that Congress needs to "amend the Code" every time a debtor devises a new way to undermine the bankruptcy system. Pet'r Br. 42. Congress codified the court's broad equitable authority in Section 105(a) precisely to give the court the flexibility and power to respond in kind.

* * *

This case provides a perfect illustration of why bankruptcy courts must have the flexibility to order equitable forfeiture: The debtor here behaved so egregiously that the remedies Law points to are wholly inadequate. When a debtor subverts the bankruptcy process in this manner, forfeiture of the privilege of exemptions becomes not only appropriate to carry out the provisions of the Code, but necessary to prevent an abuse of process and to protect the integrity of the courts. The bankruptcy court therefore did not err when it determined that Law had forfeited his claim to a homestead exemption. Forfeiture was the only remedy capable of redressing the harm produced by Law's misconduct.

CONCLUSION

For the foregoing reasons, the judgment of the Ninth Circuit should be affirmed.

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ADDENDUM

§ 522. Exemptions

(a) In this section—

(1) "dependent" includes spouse, whether or not actually dependent; and

(2) "value" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed. Such property is—

(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,

(2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

(1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title;

(2) a debt secured by a lien that is—

(A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

(ii) not void under section 506(d) of this title; or

(B) a tax lien, notice of which is properly filed;

(3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an in-

stitution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or

(4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

(d) The following property may be exempted under subsection (b)(1) of this section:

(1) The debtor's aggregate interest, not to exceed $15,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed $2,400 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed $400 in value in any particular item or $8,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed $1,000 in value, in jewelry held primarily

for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value $800 plus up to $7,500 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $1,500 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value $8,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive—

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably nec-

essary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless—

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to—

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent

reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed $15,000, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(e) A waiver of an exemption executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this section. A waiver by the debtor of a power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this section to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer, is unenforceable in a case under this title.

(f)(1)Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a judicial lien, other than a judicial lien that secures a debt—

(i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and

(ii) to the extent that such debt—

(I) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and

(II) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support[]; or

(B) a nonpossessory, nonpurchase-money security interest in any—

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

(i) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

(3) In a case in which State law that is applicable to the debtor—

(A) permits a person to voluntarily waive a right to claim exemptions under subsection (d) or prohibits a debtor from claiming exemptions under subsection (d); and

(B) either permits the debtor to claim exemptions under State law without limitation in amount, except to the extent that the debtor has permitted the fixing of a consensual lien on any property or prohibits avoidance of a consensual lien on property other-

wise eligible to be claimed as exempt property;

the debtor may not avoid the fixing of a lien on an interest of the debtor or a dependent of the debtor in property if the lien is a nonpossessory, nonpurchase-money security interest in implements, professional books, or tools of the trade of the debtor or a dependent of the debtor or farm animals or crops of the debtor or a dependent of the debtor to the extent the value of such implements, professional books, tools of the trade, animals, and crops exceeds $5,000.

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1)(A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(2) of this section.

(h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—

(1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of

this title or recoverable by the trustee under section 553 of this title; and

(2) the trustee does not attempt to avoid such transfer.

(i)(1)If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

(2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection.

(j) Notwithstanding subsections (g) and (i) of this section, the debtor may exempt a particular kind of property under subsections (g) and (i) of this section only to the extent that the debtor has exempted less property in value of such kind than that to which the debtor is entitled under subsection (b) of this section.

(k) Property that the debtor exempts under this section is not liable for payment of any administrative expense except—

(1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is at-

tributable to the value of the portion of such property exempted in relation to the value of the property recovered; and

(2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i)(1) of this section, that the debtor has not paid.

(l) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

(m) Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case.

REPLY BRIEF

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IN THE

Supreme Court of the United States

STEPHEN LAW,

Petitioner,

v.

ALFRED SIEGEL, TRUSTEE,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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INTRODUCTION

The Trustee devotes the bulk of his brief to contending that bankruptcy courts have the power to sanction litigants for misconduct. But this case is not about *whether* a court has authority to sanction a litigant who engages in misconduct (it surely does), but rather *what kind* of sanction is permitted. Here, Congress has expressly barred bankruptcy courts from imposing the very sanction the court imposed below: taking a debtor's exempt property to satisfy his estate's administrative expenses.

Deep into his brief, the Trustee concedes – as he must, and as this Court has repeatedly held – that an Article I bankruptcy court does not have equitable authority to act contrary to a statutory provision. Instead, "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988).

That proposition is fatal to the Trustee's argument because Section 522 of the Code plainly forbids taking a debtor's exempt property to pay administrative expenses. Not only does the Code expressly say just that, but it also contains a bevy of exceptions to that general prohibition, none of which applies here. These provisions reflect Congress's long-standing judgment that even an unscrupulous debtor, in most cases, should be able to exit bankruptcy with some property so that he and his family are not rendered destitute and dependent on the state.

The Trustee has no persuasive answer to the text, structure, and purpose of Section 522. Indeed, the

Trustee's main textual arguments are so implausible that the United States has declined to make them. Equally unpersuasive is the Trustee's invocation of Section 105 case law. The Trustee and United States place great weight on this Court's decision in *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007), which they collectively invoke nearly two dozen times. But *Marrama* stands only for proposition that Section 105 may permit a court to do "prompt[ly]" what it could *otherwise* do in a "delayed" fashion. *Id.* at 375–76. *Marrama* does not permit courts to do by equity what Congress has otherwise forbidden by statute. And contrary to the Trustee's repeated contention, a bankruptcy court cannot impose a sanction forbidden by the Code in the name of punishing "an abuse of process," 11 U.S.C. § 105(a), any more than it can override the Code for any other reason.

In the end, the Trustee's argument amounts to a naked plea to equity divorced from the Code, and one that would work a sweeping expansion of the power of bankruptcy courts. But as the United States previously acknowledged, Section 105 neither "authorize[s] the bankruptcy courts to create substantive rights that are otherwise unavailable" nor "constitute[s] a roving commission to do equity." U.S. Br. 30, *United States v. Energy Resources*, 495 U.S. 545 (1990) (No. 89-255). Petitioner has already incurred substantial punishment for his actions. He was denied his discharge. After all his creditors were fully paid, he lost hundreds of thousands of dollars of non-exempt equity in his home to pay the administrative expenses of the Trustee. As to whether the Trustee should now be able to take the last dollar of Petitioner's equity in

his home to pay Trustee's counsel, Congress has made the judgment that it is more important that debtors – even dishonest ones – emerge from bankruptcy with some resources to make a fresh start. This Court should respect Congress's determination and reverse the decision below.

ARGUMENT

I. Section 522 Forbids Taking Exempt Property To Satisfy Administrative Expenses.

The Trustee claims that Section 522 creates a discretionary regime that permits a court, as it deems appropriate, to surcharge[1] otherwise exempt property to pay the estate's administrative expenses. Those arguments twist the text, structure, and purpose of Section 522 beyond recognition, and they should be rejected.

A. The Express Terms Of Section 522 Bar The Trustee's Argument.

The bankruptcy court in this case did what Section 522 expressly forbids: it took Petitioner's concededly exempt property to pay his estate's administrative expenses. The plain language of Section 522 categorically forbids that sanction. Congress provided

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[1] The Trustee fashions a new term, "equitable forfeiture," in lieu of the surcharge terminology that bankruptcy courts use. This is an apparent attempt to make the bankruptcy court's actions sound akin to the doctrine of "equitable disallowance" of claims. The Trustee's neologism is misleading. As discussed *infra* at 17-18, equitable disallowance is a doctrine where Congress has *expressly authorized* bankruptcy courts to make equitable judgments.

that a debtor "may exempt" specified property, that absent timely objection such property "is exempt," and that exempt property "is not liable for payment of any administrative expense." 11 U.S.C. § 522(b), (*l*), (k). The Trustee takes this straightforward language and wrongly argues that it permits a bankruptcy court to do precisely the opposite of what the Code mandates.

1. The Trustee begins by contending that it is significant that Section 522 states that a debtor "may exempt" property. Resp. Br. 35 (quoting 11 U.S.C. § 522(b)). According to the Trustee, that phrasing indicates that "the privilege of exempting property ... is conditional," because Congress would have stated that a debtor "*shall* be allowed" to exempt had Congress meant to forbid surcharging. *Id.* at 36 (emphasis in original); *see id.* at 14.

There is, however, no meaningful difference between "may exempt" and "shall be allowed" to exempt. They mean the same thing. *E.g.*, *The American Heritage Dictionary of the English Language* 1083 (4th ed. 2000) (defining "may" as "[t]o be allowed or permitted"). Moreover, although "may" connotes discretion, it is equally clear that Section 522(b) gives that discretion to the *debtor*, who "may" choose among the various exemptions provided by State and Federal law, 11 U.S.C. § 522(b)(2), (3); *see* H.R. Rep. No. 95-595, at 360 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6316 ("[Section 522(b)] is a significant departure from present law. It permits an individual debtor ... *a choice* between exemption systems. The debtor *may choose* the federal

exemptions to which he is entitled under other federal law and [state law]." (emphasis added)).

Had Section 522 placed that discretion in the court by providing that "the *court* may allow a debtor to exempt property," then the Trustee's interpretation would be plausible. *Cf.* 11 U.S.C. § 110(h)(4) ("The debtor ... may file a motion for an order ...."). But because Section 522 bestows that discretion on the debtor, the phrase "may exempt" indicates that exemptions are the debtor's prerogative, consistent with this Court's description of the exemption regime. *See, e.g., Rousey v. Jacoway*, 544 U.S. 320, 325 (2005) ("[T]he Bankruptcy Code *permits* [the debtor] to withdraw from the estate certain interests in property." (emphasis added)).

2. The Trustee next contends that bankruptcy courts are free to disallow exemptions because the Code does not contain language requiring the court to "allow" a debtor's exemptions, Resp. Br. 35. But under Section 522(*l*), once a debtor declares property to be exempt, absent timely objection, that property "is exempt." 11 U.S.C. § 522(*l*). No court ratification is required. *See Taylor v. Freeland & Kronz*, 503 U.S. 638, 643 (1992) (absent an objection within thirty days, "Section 522(*l*) ... ma[kes] the property exempt").[2]

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[2] The Trustee's focus on the objection process is particularly misplaced because there is no basis to object to Petitioner's homestead exemption in any case. It is undisputed that Petitioner had $75,000 in equity in his homestead, and that California law allows the exemption. This is not a case where Petitioner "did not have a right to exempt ... these proceeds ... under state law."

3. The Trustee then argues that Section 522(k)'s express prohibition on using exempt property to pay administrative expenses does not apply here. According to the Trustee, this is because "administrative expenses" are defined as the "actual, necessary costs and expenses of preserving the estate" and the Trustee's expenses here were "unnecessary" because they resulted from inequitable conduct. Resp. Br. 41 & n.10 (quoting 11 U.S.C. § 503(b)(1)(A)). But if the Trustee's expenses were "unnecessary," then they would not be "administrative expenses" at all, and the Trustee could not claim them. *See, e.g., In re Taxman Clothing Co.*, 49 F.3d 310, 316 (7th Cir. 1995). In any event, the Trustee already certified that his expenses were necessary, *see* J.A. 25a (Docket entry No. 247), and if expenses are "administrative expenses" for compensation purposes under Section 503(b)(1)(A), they must be "administrative expenses" for purposes of protecting the debtor's exempt property under Section 522(k). *See Cohen v. de la Cruz*, 523 U.S. 213, 220 (1998) (In Code, "equivalent words have equivalent meaning").

4. Section 522's categorical language is unsurprising given that the provision was intended to

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Taylor, 503 U.S. at 642. Nor did the bankruptcy court surcharge the exemption because it "objected" to it. On the contrary, the bankruptcy court recognized that Petitioner was "otherwise entitled" to the exemption, but surcharged it to compensate the Trustee for his expenditures investigating the Lin lien. J.A. 97a; *see also* J.A. 150a ("[I]t is apparent that the debtor was not abusing his exemptions." (2006 BAP opinion)).

ensure that dishonest debtors would not become wards of the state. The Trustee points to no countering indicia suggesting that Congress intended exemptions to be subject to the unfettered discretion of bankruptcy courts. As the Commission on the Bankruptcy Laws explained in addressing the provision that ultimately became Section 522 of the Code:

> The right to the exemption is unqualified; it does not depend on *whether the debtor receives a discharge* and is *not forfeited by "bad conduct"* of the debtor.[3]

Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, pt. II, at 128 (1973) (proposed § 4-503 note 2) (emphasis added). Section 522 thus means what it says, and not the opposite, as the Trustee would have it: property that "is exempt" under Section 522 "is not liable for payment of any administrative expense." 11 U.S.C. § 522(k), (*l*).[4]

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[3] The Trustee urges the Court to ignore this passage because the original proposed Section 522 stated that a "debtor ... shall be allowed to exempt." Resp. Br. 36–37. As explained above, that phrasing is not materially different from Section 522 as enacted and simply reflects that the current section allows debtors to choose between federal and state exemptions, which the Commission's proposal did not. Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, pt. II, at 125 (1973) (proposed § 4-503).

[4] The Trustee contends that the "overwhelming majority of lower courts" permit equitable surcharging. Resp. Br. 22 n.4. But the leading bankruptcy treatise reports that "*most courts* have held that section 105 *cannot* be used as a basis for any implied good faith exception" to the provisions governing exemptions. 2 *Collier*

B. Section 522 Impliedly Forbids Using Exempt Property.

The Trustee also cannot reconcile his interpretation of Section 522 with that provision's numerous enumerated exceptions and limitations on a debtor's right to exempt property – all of which are uncontestedly inapplicable here.

Getting statutory interpretation exactly backwards, the Trustee asks this Court to ignore these many exceptions because they "were enacted at different times by different Congresses." Resp. Br. 50. But as this Court has repeatedly recognized, Congress's decision to enumerate specific exceptions to the exemption regime means that "additional exceptions are not to be implied." *Hillman v. Maretta*, 133 S. Ct. 1943, 1953 (2013) (quotation marks omitted). And "[t]hat is particularly true where," as here, "'Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions.'" *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012) (quoting *Varity Corp. v. Howe*, 516 U.S. 489, 519 (1996) (Thomas, J., dissenting)).

1. Faced with explaining why courts should be free to graft additional exceptions onto Congress's "comprehensive scheme," the Trustee repeatedly reprises his flawed argument that Section 522 does not actually prohibit using exempt property to satisfy administrative expenses. *E.g.*, Resp. Br. 43 ("[T]here

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on Bankruptcy ¶ 105.02[5][a], at 105-30 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2013) (emphasis added).

are no 'specific' statutory terms to 'compl[y] with' in this case."); *id.* at 47 ("circular" to assume that exceptions to "general bar" are exhaustive because the question is whether there "is in fact a bar").

But there *are* specific statutory terms to comply with in this case, namely, Section 522(k)'s flat command that exempt property "is not liable for payment of any administrative expense." *See supra.* And when Congress created numerous exceptions to that general prohibition *without* creating an exception for inequitable conduct, the inference that Congress intended no such exception is proper, not "circular."[5]

2. The Trustee then argues that even if Section 522 does contain a categorical bar (and it does), no inference should be drawn from Section 522's numerous exceptions because supposedly none of those exceptions deals with inequitable conduct. Resp. Br. 44–45; *see also* U.S. Br. 27. Again, that blinks the statutory reality. The fact that Congress did not also create a generalized exception for inequitable conduct is precisely why a bankruptcy court ought not fashion the exception itself. *See Hillman*, 133. S. Ct. at 1953. And in any case, the Trustee is simply wrong to contend that Section 522 is not concerned with inequitable conduct. To the contrary, that is one of the Section's primary concerns.

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[5] The statutes in *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 154–55 (2002), and *Varity Corp. v. Howe*, 516 U.S. 489, 507–08 (1996) (cited in Resp. Br. 47), contained nothing like Section 522(k)'s express prohibition on taking exempt property.

a. In the first place, the Trustee fails to come to terms with Section 522(q), which was enacted with other amendments in the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA"), Pub. L. No. 109-8, 119 Stat. 23. As Petitioner explained, Pet'r Br. 30, Section 522(q) provides that even when a debtor engages in *criminal* bankruptcy fraud resulting in an "abuse of the [Code]," the court may only cap, and cannot eliminate, the debtor's homestead exemption. 11 U.S.C. § 522(q)(1). By surcharging all of Law's exempt property here, therefore, the court imposed a sanction that Congress has spared even bankruptcy felons.

The Trustee's principal response is that Section 522(q) and other BAPCPA limitations on exemptions are irrelevant here because Congress provided that the BAPCPA amendments would not apply to pre-2005 petitions such as Law's. Resp. Br. 48. But Section 522(q)'s relevance is obvious and substantial. Were the Trustee correct that courts already had equitable authority to surcharge the exemptions of dishonest debtors, amendment would have been unnecessary. And the fact that Congress chose to take the debtor-friendly step of making the amendment *inapplicable* to existing petitions like Law's shows that Congress understood that the amendment *curtailed* a debtor's right to exempt. Given that the pre-BAPCPA Code did not allow a bankruptcy court even to cap exemptions for felonies demonstrating an "abuse of the [Code]," 11 U.S.C. § 522(q)(1), it surely did not allow a court to eliminate a debtor's exemption altogether for such conduct, let alone the non-criminal conduct at issue here.

The Trustee half-heartedly contends that Section 522(q)'s cap on exemptions was not intended to apply "outside the context of generous state homestead provisions." Resp. Br. 49. But the plain language of the provision and common sense show otherwise. Congress's chosen penalty for criminal conduct was not to eliminate the wrongdoer's exemption, but merely to cap it. That decision embodies Congress's judgment that even felons are entitled to retain *some* portion of the homestead exemption their state provides. Yet the bankruptcy court here eliminated Petitioner's entire homestead exemption for conduct that, according to Congress, does not even warrant a cap.

b. The Trustee also has no answer for the fact that Congress specified the particular kinds of debts for which exempt property is liable, including debts where the debtor engaged in misconduct. *E.g.*, 11 U.S.C. § 522(c)(4) (debts from fraudulent student loans). And particularly relevant is Congress's decision not to premise a debtor's right to exemptions on obtaining a discharge. Pet'r Br. 33.

The Trustee's sole treatment of denial of discharge is buried in a footnote urging that, "[a]lthough a debtor may be able to exempt property even if he is denied a discharge, nothing in the Code mandates that he must always be able to do so." Resp. Br. 53 n.13. But when Congress expressly declined to make exemptions liable for all non-dischargeable debts, the reasonable inference is that Congress did not intend a debtor to lose his exemptions in *other* circumstances warranting non-dischargeability, as the legislative history confirms. *See supra*.

c. Likewise, the Trustee has no answer to the fact that Section 522(k) itself contains two finely tuned exceptions yet has no exception for administrative expenses arising out litigation misconduct. 11 U.S.C. § 522(k)(1), (2). Congress could have enacted "Section 522(k)(3)," but it chose not to. *Cf.* 11 U.S.C. § 362(k)(1) (authorizing "attorneys' fees" for persons injured by violations of automatic stay).

4. Finally, the Trustee misses the point when he emphasizes that the Code does not limit a state's power to reduce or eliminate its exemptions. Resp. Br. 49–50. Congress had good reason to permit states to determine what property may be exempted. If a state sets exemptions too low, the state itself will bear the burden of supporting its destitute debtors. Thus, states are best equipped to make policy judgments about the kind of minimum property their debtors need – such as their homes, tools of trade, or pensions – to avoid becoming wards of the state. *See* H.R. Rep. No. 95-595, at 126, *reprinted in* 1978 U.S.C.C.A.N. at 6087. In sum, Congress let states set the exemptions they believe best balance the interests of creditors, debtors, their dependents, and the public. And that is exactly why bankruptcy courts are not free to strike a different balance.

II. Neither Section 105 Nor A Bankruptcy Court's "Inherent" Powers Allow The Court To Do What Section 522 Forbids.

A. This Court's Section 105 Case Law Contradicts The Trustee's Position.

1. Because Section 522 forecloses using exempt property to pay administrative expenses, the

bankruptcy court has no equitable authority to order otherwise. The Trustee nonetheless suggests at times that the provision *does* allow a bankruptcy court to take action prohibited by other sections of the Code. For example, he places great weight on the fact that Section 105 states that the court may take "any" action "necessary *or appropriate*" to carry out the Code. Resp. Br. 19. And he emphasizes that, when this Court held in *Norwest* that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code," the Court did not mention Section 105 in its discussion, as if Section 105 provided greater powers than those at issue in *Norwest*. *Id.* 23–24 (quoting *Norwest*, 485 U.S. at 206).

These are red herrings. It is well-settled that bankruptcy courts are Article I tribunals that have no power to act inconsistently with the Code.[6] *See, e.g.*, *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 24–25 (2000); *United States v. Noland*, 517 U.S. 535, 543 (1996); *Young v. Higbee Co.*, 324 U.S. 204, 214 (1945); *SEC v. U.S. Realty & Improvement Co.*, 310 U.S. 434, 455 (1940); *D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204, 207–08 (1932). *Cf. Stern v. Marshall*, 131 S. Ct. 2594, 2603–04 (2011) (discussing limited powers of bankruptcy courts).

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[6] Contrary to the Trustee's contention, Resp. Br. 22, this is not an argument that bankruptcy courts may use Section 105 to do only what the Code authorizes, but rather that they may not use it to do what the Code forbids.

2. The Court's decision in *Ginsberg* squarely demonstrates that Section 105 cannot justify the surcharge ordered here. In *Ginsberg*, the Court held that a bankruptcy court had no equitable power to order the arrest of an officer of a bankrupt corporation who was fleeing with "a large amount of cash belonging to the corporation." *Ginsberg*, 285 U.S. at 205. The creditor argued that the court needed the power to arrest the fleeing officer to prevent an abuse of judicial process. *See* Pet'r Br. 10–11, *D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204 (1932) (No. 429). This Court, however, held that the bankruptcy court's equitable authority could not support the arrest given that the specific Act provision dealing with arrests reached only bankrupts and not officers of bankrupt corporations. Pet'r Br. 25–26.

The Trustee argues that *Ginsberg* is distinguishable because the Act specifically addressed detention, whereas here the Code does not specifically address the surcharge of homestead exemptions by debtors who engage in misconduct. Resp. Br. 44–45; *see also* U.S. Br. 28–29. This distinction does not withstand scrutiny. Most obviously, Section 522(k) categorically prohibits using exempt property to pay administrative expenses, and many provisions in Section 522 *do* address debtor misconduct. *Supra*, at 9-12.

In addition, one might just as easily have said in *Ginsberg* that the Act did not specifically address the arrest of officers of bankrupt corporations. But that is the approach this Court properly rejected. *Ginsberg* instead recognized that the Act identified the circumstances in which bankruptcy courts could impose

a particular *remedy* – arrest – and the Court held that bankruptcy judges could not invoke general equitable powers to order arrests under different circumstances. So too here. "However inclusive" Section 105 may be, it "will not be held to apply to a matter specifically dealt with in another part of the same enactment."[7] *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 228 (1957). Rather, "[t]he terms of the specific authorization must be complied with." *RadLAX*, 132 S. Ct. at 2071.

3. Unable to distinguish *Ginsberg*, the Trustee and the United States place enormous weight on *Marrama*, which they repeatedly invoke. But *Marrama* is plainly distinguishable, and in fact supports Petitioner's position.

In *Marrama*, a debtor sought to convert a bankruptcy petition under Chapter 7 to a petition under Chapter 13. The debtor invoked Section 706 of the Code, which provides that a debtor "may convert a case under [chapter 7] to a case under chapter ... 13." 549 U.S. at 371. The bankruptcy court denied the

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[7] The Trustee tries to distinguish *Ginsberg* on the ground that Section 105's predecessor permitted only "necessary" orders and not "appropriate" orders, and did not include the sentence about a bankruptcy court's *sua sponte* authority. Resp. Br. 45 n.12. But *Ginsberg*'s reasoning did not turn on whether the arrest could be justified as "necessary." Indeed the arrest probably was "necessary," as the corporate officer had attempted to flee the jurisdiction with "a large amount of cash belonging to the corporation." 285 U.S. at 205. Nor did the bankruptcy court act *sua sponte* – it acted on the creditor's application for the officer's arrest. *Id.*

debtor's conversion petition because he had engaged in "bad faith" conduct. *Id.* at 369–70.

In affirming that denial, this Court's primary holding had nothing to with Section 105. Although Section 706 gave debtors the right to convert their case to Chapter 13, it also contained an express provision stating that a debtor was entitled to convert only if the "debtor may be a debtor under such chapter." 11 U.S.C. § 706(a), (d). The debtor's inequitable conduct made him ineligible to be a debtor under Chapter 13. *See Marrama*, 549 U.S. at 373. This Court thus held that "[Section] 706(d) ... provides adequate authority for the denial of his motion to convert." *Id.* at 374.

The Court went on to discuss Section 105 as an alternative basis for its holding, but that discussion demonstrates the error of the Trustee's argument. In explaining that Section 105 could also provide a basis to justify the bankruptcy court's action, the Court emphasized that the Code expressly permitted the bankruptcy court to convert a debtor back to Chapter 7 upon a showing of inequitable conduct. 549 U.S. at 372–74. Recognizing that the Code would permit the conversion, the Court simply held that Section 105 could "authorize an *immediate* denial of a motion to convert filed under § 706 in lieu of a conversion order *that merely postpones the allowance of equivalent relief*." *Id.* at 375 (emphasis added). The Court repeated the same point a little later: a bankruptcy court's equitable powers "might well provide an adequate justification for *a prompt, rather than a delayed*, ruling on an unmeritorious attempt to qualify

as a debtor under Chapter 13." *Id.* at 376 (emphasis added).

This case is *Marrama*'s polar opposite. The bankruptcy court here did not do "prompt[ly]" what it could otherwise do on a "delayed" basis. *Id.* It did what the Code *forbids*. *Marrama* thus stands only for the proposition that Section 105 gives bankruptcy courts discretion in how they carry out the powers the Code gives them. It does not hold that Section 105 permits what other provisions of the Code forbid.

3. The Trustee also places great weight on the First Circuit's decision in *Malley v. Agin*, 693 F.3d 28 (1st Cir. 2012), *e.g.*, Resp. Br. 39, but that case cannot be squared with this Court's teachings and Section 522's plain language.

In *Malley*, the court reasoned that a surcharge order would "carry out," not contravene, the Code because it "vindicate[s] ... § 522, regulating the determination of legitimate exemptions for the debtor's benefit." *Malley*, 693 F.3d at 30. But Congress has defined what is a "legitimate exemption[]" in Section 522, and determined that not every bad act by a debtor warrants a loss of exemptions. The Trustee also embraces *Malley*'s contention that surcharging "vindicates § 521, requiring honest disclosure of non-exempt assets." *Id.* But it is a non-sequitur to say that because the Code requires honest disclosure of assets, it "vindicates" the Code to impose a punishment that the Code forbids.

4. Finally, the Trustee also invokes "long" historical practice. Resp. Br. 30. The Trustee's primary argument on this score has nothing to with

exemptions, but rather bankruptcy courts exercising equitable powers to "disallow a claim." *Id.* at 30–31. The Trustee fails to mention that equitable disallowance is, and has always been, expressly permitted by statute. Section 57(k) of the Bankruptcy Act of 1898 originally provided that "[c]laims which have been allowed may be reconsidered for cause and reallowed or rejected in whole or in part, *according to the equities of the case*." ch. 541, § 57(k), 30 Stat. 544, 561 (emphasis added) (repealed 1978); *Pepper v. Litton*, 308 U.S. 295, 305 & n.12 (1939) (citing Section 57(k) as support for the disallowance claims). And today, the Code provides in Section 502(j) that a bankruptcy court may "reconsider" a claim and "disallow[]" that claim "according to the equities of the case." 11 U.S.C. § 502(j). Such language is conspicuously absent from Section 522.[8]

When the Trustee does finally turn to historical claims about surcharging, his argument also fails. As the Trustee acknowledges, the cases he cites are ones where the debtor has concealed *exempt* property from the trustee (*i.e.*, initially failed to turn over property that debtor later tried to claim as exempt). Resp. Br. 32. Leaving aside the fact that Petitioner claimed and disclosed his homestead exemption when he filed his petition, the historical practice claimed by Petitioner is in fact highly mixed. There was no consistent practice because under the Act, unlike the Code, exemptions

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[8] The United States is similarly wrong to rely on *United States v. Noland*, 517 U.S. 535 (1996). That case concerned the "equitable subordination," which is also expressly authorized by the Code. 11 U.S.C. § 510(c)(1) (allowing "equitable subordination").

were largely the product of state law. *See, e.g.*, I Harold Remington, *A Treatise on the Bankruptcy Law of the United States* § 1094 (2d ed. 1915) (question is "variously decided"); *see also In re Thompson*, 140 F. 257, 261 (E.D. Wash. 1905) ("weight of authority" supports allowing exemption). Accordingly, there is no conceivable historical basis to depart from Section 522's plain language.

B. The Second Sentence Of Section 105 Cannot Justify The Surcharge Order.

Apparently recognizing the weakness of his argument under the first sentence of Section 105, the Trustee relies heavily on the second sentence, which provides: "No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a).

Through the frequent use of well-placed ellipses and quotation marks, the Trustee repeatedly attempts to recast this sentence as an independent grant of power to bankruptcy judges to do whatever they wish in order to prevent an abuse of process. *E.g.*, Resp. Br. 3, 13. In effect, the Trustee treats the provision as if it said: "Notwithstanding *any other provision of law*, a bankruptcy court may take any action necessary or appropriate to prevent an abuse of process." But that is not what Section 105 says, and that construction would radically depart from existing Section 105 law, which has always recognized that a bankruptcy court's

equitable powers do not trump the Code. Instead, this sentence provides only that a bankruptcy court may take action *sua sponte* in certain instances even if a party authorized to raise an issue fails to do so. Here, no party is authorized by the Code to move for a surcharge, and thus the sentence is irrelevant.[9]

Citing the First Circuit's decision in *Malley*, the Trustee responds that "[i]f Congress had intended the second sentence of Section 105(a) to clarify only that courts are not barred from acting *sua sponte* where the Code authorizes a party to raise an issue, Pet'r Br. 38, it presumably would have drafted the second sentence to match the first." Resp. Br. 25 (citation omitted). But there is an obvious reason that the second sentence of Section 105 does not match the first sentence. Congress did not want bankruptcy judges to act *sua sponte* whenever the Code provided for the raising of an issue by a party in interest; that would be contrary to the adversarial process. *Cf. NASA v. Nelson*, 131 S. Ct. 746, 756 n.10 (2011). Rather, Congress wanted bankruptcy courts to respect the adversarial process and grant relief only upon a party's request, *except* "to enforce or implement court orders or rules, or to prevent an abuse of process," in which case the court could act *sua sponte*. 11 U.S.C. § 105(a).

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[9] Contrary to the Trustee's suggestion, Resp. Br. 26 & n.6, this 1986 amendment overruled *In re Gusam Restaurant Corp.*, 737 F.2d 274, 276 (2d Cir. 1984), which *had* held that a court could not act *sua sponte* where the Code allowed a party to raise the issue. Pet'r Br. 37–38. A wealth of authority has concluded that the amendment was intended to overrule *Gusam*. *E.g.*, *In re Tennant*, 318 B.R. 860, 869 (B.A.P. 9th Cir. 2004) (citing authority).

C. "Inherent Authority" Cannot Justify The Surcharge Order.

Finally, both the Trustee and the United States argue that the bankruptcy court was entitled to issue the surcharge order under an "inherent authority" apparently *broader* than Section 105. Resp. Br. 27–30; U.S. Br. 17–22. They rely on *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991), which held that a district court had the inherent power to impose attorney's fees. This argument was never presented below, and is waived. *Cf. Taylor*, 503 U.S. at 645–46. It is also meritless.

Even assuming bankruptcy courts have some inherent authority,[10] that authority would not allow them to override contrary provisions of the Code. *Chambers*, 501 U.S. at 47; U.S. Br. 22 (conceding the point). When *Chambers* held that an Article III court was authorized to award attorneys fees in situations *in addition* to those enumerated in the Federal Rules, it emphasized that the court would have no such power had the rules otherwise prohibited fee awards. 501 U.S. at 47. Here, Section 522(k) does prohibit surcharging.[11]

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[10] *Marrama* acknowledged only that a bankruptcy court might have possessed an "inherent power" "*if § 105 had not been enacted.*" 549 U.S. at 375–76 (emphasis added).

[11] The United States also argues that a federal court's inherent authority "supersedes contrary provisions of state law, including provisions that declare particular property to be exempt from execution of a money judgment." U.S. Br. 26. This case does not raise any federal preemption question, however, because Petitioner relies on federal law: 11 U.S.C. § 522. The fact that Section 522 incorporates state law exemptions does not alter its

III. The Punishments That Congress Has Authorized Are Sufficient To Deter Improper Conduct.

The Trustee concedes that the Bankruptcy Code's existing punitive provisions, such as criminal sanctions and denial of discharge, deter litigation misconduct. Resp. Br. 53. But without any supporting argument, he asserts that these remedies "add nothing to the pot for listed creditors." *Id.* (quotation marks omitted). That is false; denial of discharge ensures that listed creditors can collect debts from the debtor's post-petition earning, and criminal prosecution can result in a restitution judgment. Similarly, the Trustee asserts that he should not be required to "pay out of pocket for fulfilling his duty to expose and prevent fraud." *Id.* But the bankruptcy court has an existing remedy to prevent that outcome: it may impose a sanction on the debtor, which would be payable from the debtor's post-petition assets. What it may *not* do is order that the sanction be paid from the debtor's homestead exemption.

The Trustee suggests a surcharge is permissible because a sanctions order would allow the Trustee to

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character as federal law. *See Arkansas v. Oklahoma*, 503 U.S. 91, 110 (1992). And tellingly, neither of the two cases cited by the United States concerned Section 522 (indeed, the first was not even a bankruptcy case, and the second turned on state set-off law). Neither provides a basis for this Court to depart from Congress's determination that exempt property "is not liable for payment" of administrative expenses. 11 U.S.C. § 522(k). And that is true regardless of whether a court calls its order a "surcharge" or a "set-off."

obtain equivalent relief. Resp. Br. 54. But tellingly, the "equivalent" relief the Trustee posits is not equivalent. The Trustee carefully states that a sanctions order could be "used to attach a lien to ... a *dwelling* purchased with the exemption." *Id.* (emphasis added). But the Trustee properly does not contend that he would be entitled to the *exempt* portion of Petitioner's homestead. No matter how a sanctions order is denominated, a bankruptcy court may not deprive a debtor of exemptions that Section 522 allows.

Thus, the Trustee's primary argument is that collecting a debtor's non-exempt property may be "cumbersome" or may not result in full compensation if the debtor is judgment-proof. Resp. Br. 53–54. But a court may not ignore the Bankruptcy Code in order to make judgment collection more convenient for the Trustee. Indeed, the Court has rejected a similar argument before. In *Grupo Mexicano de Desarrollo, SA v. Alliance Bond Fund, Inc.*, a creditor argued for a preliminary injunction preventing a debtor from transferring assets. 527 U.S. 308, 312 (1999). The United States supported the creditor, arguing the remedy would "preserv[e] ... the court's ability to render a judgment that will prove enforceable" and "preven[t] inequitable conduct on the part of defendants." *Id.* at 330 (quoting United States' *amicus* brief). This Court rejected that contention, declining to "add[], through judicial fiat, a new and powerful weapon to the creditor's arsenal [which] could radically alter the balance between debtor's and creditor's rights." *Id.* at 331. So too here: Congress has chosen to protect exemptions, and a bankruptcy court may not

"radically alter th[at] balance between debtor's and creditor's rights."

CONCLUSION

The judgment of the Ninth Circuit should be reversed and the case remanded for further proceedings.

November 21, 2013

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SUPPLEMENTAL BRIEF

ORIGINAL

No. 12-5196

IN THE

Supreme Court of the United States

STEPHEN LAW,

Petitioner,

v.

ALFRED SIEGEL, TRUSTEE

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

SUPPLEMENTAL BRIEF OF PETITIONER

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Petitioner respectfully submits this supplemental brief in support of certiorari in response to the invitation brief filed by the United States as *amicus curiae*.

INTRODUCTION

Section 522 of the Bankruptcy Code contains a detailed set of provisions governing whether and to what extent a debtor is entitled to exempt property from the bankruptcy estate. In this case, although it was undisputed that Petitioner was entitled to a $75,000 homestead exemption under § 522, the bankruptcy court nonetheless "surcharged" (*i.e.*, eliminated) Petitioner's exemption by purporting to invoke equitable authority under § 105(a) of the Code. The United States acknowledges that there is a circuit "conflict" that "might warrant this Court's review" about whether a bankruptcy court has the equitable power to deprive a debtor of exemptions that § 522 expressly grants. U.S. Br. 10. But the United States contends that issue "is not presented here" because the surcharged property happened to be used to satisfy the administrative expenses owed to the Trustee and his counsel, rather than the claims of creditors. *Id.*

The distinction proposed by the United States between surcharging to satisfy creditor claims and surcharging to satisfy administrative expenses is illusory. No court (and no litigant in this case) has ever suggested that a court's power to surcharge turns on whether the exempted property is used in part or in whole to satisfy the attorney's fees generated by litigation regarding the exemption. To the contrary, *every* court of appeals that has addressed the relationship between § 522

and § 105 has done so in the context of a claim to surcharge for the reimbursement of attorney's fees. The courts that do not allow equitable surcharges do not permit them regardless whether the surcharge is used to "satisfy pre-petition debts *or administrative expenses*." *In re Scrivner*, 535 F.3d 1258, 1264 (10th Cir. 2008) (emphasis added). And the courts, like the Ninth Circuit below, that do permit surcharging do not draw that distinction either. That is presumably why the United States concedes at the end of its brief that there may be some "overlap" between these issues. U.S. Br. 18. The reality, however, is that there is 100 percent overlap, and this case squarely presents the question of whether a bankruptcy court has the equitable power to deny debtors the exemptions the Code otherwise expressly grants them.

The United States is equally erroneous in contending that the decision below was correct on the merits. Congress expressly provided in § 522 that certain property is to be exempted from distribution in the bankruptcy estate in order to facilitate a fresh start for the debtor. Section 522 further contains nuanced and narrow exceptions to that exemption regime, including limited exceptions for bad acts on the part of the debtor. *See* 11 U.S.C. §§ 522 (k), (q). Those express exceptions would be meaningless if bankruptcy courts were free to strip debtors of exemptions whenever they believed that equity so warrants. *See Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988) (equitable powers "must and can only be exercised within the confines of the Bankruptcy Code"). To be sure, a bankruptcy court has the power to order sanctions to punish litigant misconduct.

But that power does not extend to – nor is it equivalent to – surcharging exemptions that Congress has granted to a debtor. Congress has made the legislative determination that exempted property is not available to pay attorney's fees or any other administrative expense in bankruptcy, absent certain limited exceptions not present here. A court may not override that policy choice by issuing a sanctions order that takes the very property that Congress has declared exempt.

SUPPLEMENTAL REASONS FOR GRANTING THE WRIT

1. The United States is incorrect when it claims that the circuit split regarding equitable surcharges does not encompass surcharging to pay administrative expenses, such as attorney's fees for trustee's counsel.[1] To the contrary, *every* circuit that has addressed the surcharge issue has done so in the context of a surcharge used to pay, at least in part, administrative expenses, and none of the opinions has mentioned, let alone rested upon, on the creditor/administrative costs distinction the United States claims is dispositive.

As the United States recounts, the Tenth Circuit has held that § 105 does not authorize equitable surcharges. "[B]ecause the surcharge of exempt property is inconsistent with the Code's provisions [in § 522] . . . [w]e therefore hold that the bankruptcy court exceeded its equitable authority under § 105(a) in authorizing the surcharge of the debtor's exempt assets." *In re Scrivner*, 535 F.3d at 1265. The United States claims, however, that this holding is limited to surcharges used to return exempted property "to creditors." U.S. Br. 10.

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[1] The United States stands alone in its view. Respondent has conceded that the surcharge at issue here is the subject of a circuit split. Br. of Resp't at 10.

The United States fails to discuss the relevant part of *Scrivner*'s holding. In *Scrivner*, the bankruptcy court had granted "an order of contempt and to surcharge the debtors' exemptions in the amount of $17,424.75 *plus interest, costs, and attorneys' fees*." 535 F.3d at 1262 (emphasis added). That is, in the underlying motion, the trustee successfully asked the bankruptcy court to surcharge the debtor's exemptions in an amount equal to the debtor's undisclosed income *plus* attorney's fees incurred in litigating the surcharge issue. On appeal, the Tenth Circuit did *not* hold that the surcharge was appropriate to the extent it was used to pay attorney's fees incurred in restoring property to the estate. Instead, it categorically rejected the use of § 105(a) to surcharge to satisfy administrative expenses or the claims of creditors. The court explained that § 522 already "contains a limited number of exceptions to the rule that exempted property cannot be used to satisfy pre-petition debts *or administrative expenses*" and thus "we may not read additional exceptions into the statute." *Id.* at 1264 (emphasis added). The Tenth Circuit specifically cited § 522(k) for this proposition, which states that "[p]roperty that the debtor exempts under this section *is not liable for payment of any administrative* expense" except in two narrow circumstances not present here or in *Scrivner*. Thus, contrary to the United States' statement that the case below is "the first court of appeals decision" to address this issue, U.S. Br. 17, the Tenth Circuit has expressly held that equitable surcharging is impermissible even where the surcharge was used to pay the attorney's fees of trustee's counsel.

The cases on the other side of the split likewise do not distinguish between surcharging to pay administrative expenses and surcharging to reimburse creditors. The Ninth Circuit, of course, does not draw such a distinction. In this case, it affirmed a surcharge to pay the attorney's fees of Trustee's counsel, and in doing so it cited *Latman v. Burdette* as authority, Pet. App. A, at 2, in which the Ninth Circuit authorized an equitable surcharge that was, at least in part, used to satisfy the claims of unpaid creditors. 366 F.3d 774 (9th Cir. 2004). The First Circuit did not draw the distinction the United States contends is critical either. In *Malley*, the trustee filed a motion to surcharge the "Debtors' Exempt Property by $27,491.00, being the total of the value of the Non-Exempt Funds *plus the Trustee's law firm's fees and administrative costs and expenses* in pursuing the Non-Exempt Funds' turnover."[2] Chapter 7 Trustee's Motion, *In re Malley*, Case No. 10-14835-JNF (Bankr. D. Mass. Mar. 18, 2011) ("Motion"). The First Circuit affirmed the surcharge categorically, again without any suggestion that its analysis differed to the extent the surcharge was used to satisfy creditors and compensating trustee's counsel. *Malley v. Agin*, 693 F.3d 28, 30 (1st Cir. 2012).

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[2] Notably, the *Malley* trustee cited the Bankruptcy Appellate Panel opinion in *Scrivner* as authority for the proposition that it was entitled to costs and fees because that court had upheld "the [bankruptcy] court's award of reasonable attorney's fees incurred by the trustee in bringing the surcharge motion and the fees and costs associated with liquidating the exempt asset." Motion ¶ 23 (citing *In re Scrivner*, 370 B.R. 346, 354 (10th Cir. BAP 2007)). As discussed above, the Tenth Circuit subsequently reversed the Bankruptcy Appellate Panel on this point and held that exemptions could not be surcharged to satisfy attorney's fees incurred in litigating debtor misconduct.

The lower courts are equally divided on the question of surcharges, and like the circuit courts, they do not distinguish between the purpose for which the surcharge is used. *Compare In re Dunn*, No. 05-09708-8-JLR, 2010 WL 2721201, at *2 (Bankr. E.D.N.C. July 7, 2010) ("The court would be inclined to surcharge the exempt asset for the expenses incurred by the trustee in bringing this action, but the majority construction of 11 U.S.C. § 522(k) does not permit the court to surcharge an exempt asset for administrative expenses under circumstances other than those provided by the Code." (citing *Scrivner*)) *and In re Vaughn*, No. B.R. 08-64071-MGD, 2008 WL 7880893, at *4-6 (Bankr. N.D. Ga. Nov. 25, 2008) (same) *with In re Spiers*, No. B.R. 11-32345, 2013 WL 319785, at *7 (Bankr. W.D.N.C. Jan. 28, 2013) (allowing surcharge to pay administrative expenses); *In re Price*, 384 B.R. 407, 411 (Bankr. E.D. Va. 2008) (same); *In re Swanson*, 207 B.R. 76, 80-81 (Bankr. D.N.J. 1997) (same).

The United States also contends that it is relevant that Petitioner "did not squander or ultimately withhold non-exempt assets from the estate," U.S. Br. 16-17, but whether the assets were ultimately returned to the estate cannot make a difference. Petitioner was found to have falsely encumbered an asset and to have imposed costs on the estate in doing so. On those grounds, the bankruptcy court deprived Petitioner of the exemption on the asset to which he was otherwise entitled, explaining that "were Debtor to receive his homestead exemption, the financial consequences of Debtor's misconduct would fall most heavily upon Debtor's creditors, including Trustee and his attorneys." Pet. App. B, at 10. That rationale

applies equally where the estate is harmed by a debtor's failure to turn over property and where the debtor causes the estate to incur additional legal fees. In both cases, the surcharge is an attempt to make the estate whole for shortcomings that it would not have suffered but for the debtor's supposed bad acts. Indeed, the distinction proposed by the United States makes little sense given that administrative expenses may have priority over the claims of unsecured creditors. *See* 11 U.S.C. § 507. Surcharging otherwise exempt property of the debtor to pay administrative expenses thus increases the estate and may leave additional property to satisfy the claims of creditors with lower priority.

The United States is thus simply wrong when it contends that this Petition does not present the issue on which the courts of appeal and lower courts are split. Had Petitioner filed for bankruptcy in Utah instead of California, the bankruptcy court would not have been able to surcharge Petitioner's assets to compensate Trustee's counsel or for any other purpose. Only this Court can resolve this split, and it should do so in this case.

2. The United States is also incorrect when it urges that the Ninth and First Circuits have correctly interpreted § 105(a) to permit bankruptcy courts to strip debtors of exemptions that § 522 provides them. The exemption provisions of the Bankruptcy Code are one of the primary ways in which in the Code achieves its objective of providing debtors with a "fresh start." *Rousey v. Jacoway*, 544 U.S. 320, 325 (2005) (noting that "[t]o help the debtor obtain a fresh start, the Bankruptcy Code permits him to withdraw from the estate certain interests in property, such as

his car or home, up to certain values"). And Congress has set out in substantial detail when those exemptions are available, along with the (highly) limited circumstances in which a debtor should be deprived of them. Notably, Congress has expressly stated that exempt assets *are not* to be used to pay administrative expenses except in specified circumstances. 11 U.S.C. § 522(k). And Congress has further expressly specified the type of culpable conduct that warrants depriving a debtor of his exemptions. For example, Congress has stated that a debtor's exemptions cannot exceed $125,000 if the debtor owes any money arising from "any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years." 11 U.S.C. § 522(q)(1)(B).

The United States' position thus amounts to saying that although Congress has decreed that even a debtor who owes a debt on a wrongful death judgment is *still* entitled to claim exemptions up to $125,000, a bankruptcy court may *entirely* deprive a debtor of his exemptions if it finds that equity so warrants.[3] As the Tenth Circuit correctly observed, "[t]o allow the bankruptcy court, through principles of equity, to grant any more or less than what the clear language of [a statute] mandates would be tantamount to judicial legislation and is something that

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[3] Indeed, even the wrongful death debtor is entitled to exemptions in excess of $125,000 if the exemption is "reasonably necessary for the support of the debtor and any dependent of the debtor." 11 U.S.C. § 522(q)(2). In contrast, the bankruptcy court was allowed to strip Petitioner of his entire homestead exemption under the Ninth Circuit's rule.

should be left to Congress, not the courts." *Scrivner*, 535 F.3d at 1263 (quotation marks omitted; alteration in original).

The United States contends that the Tenth Circuit's view "would render largely superfluous Section 105(a)'s general authorization to issue orders 'necessary or appropriate to carry out provisions of the' Code." U.S. Br. 15. But of course the United States' interpretation would give the bankruptcy court the authority to override, not "carry out," the express and specific provisions of the Code. *Scrivner*, 535 F.3d at 1264 ("Because the Code contains explicit exceptions to the general rule placing exempt property beyond the reach of the estate, we may not read additional exceptions into the statute."); *see also* Reply Br. of Pet'r at 7-8 (explaining how the Ninth Circuit's rule undermines legislative choices about the circumstances in which exemptions are allowed). Section 105(a) serves an important role in ensuring that a bankruptcy court may issue orders – either on its own motion or sua sponte – necessary to enforce the protections and obligations the Bankruptcy Code creates. Section 105(a) cannot be read to create a free-floating power to undertake whatever actions the bankruptcy court finds equitable despite express prohibitions to the contrary elsewhere in the Code.

Nor is the reasoning of the Ninth Circuit vindicated by this Court's decision in *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007). *Maramma* dealt with the authority of a bankruptcy court to decline to convert a debtor's Chapter 7 case to Chapter 13. Although the Bankruptcy Code allows debtors to convert their cases "at any time," 11 U.S.C. § 706, this Court held that a bankruptcy court had the

equitable authority under § 105 to decline to convert a case where it found that the debtor had fraudulently concealed assets. 549 U.S. at 375. Central to this Court's reasoning was the fact that it was undisputed that a court faced with such a debtor had the authority to convert the case back to Chapter 7 in light of the debtor's fraud. Thus, § 105 was used only to "authorize an *immediate denial* of a motion to convert filed under §706 in lieu of a conversion order that merely *postpones* the allowance of equivalent relief." *Id.* (emphases added); *id.* at 376 (court had authority to issue a "prompt, rather than a delayed, ruling on an unmeritorious attempt to qualify as a debtor under Chapter 13"). Here, § 105 is not being used to deprive debtors of exemptions that would ultimately be taken away from them under the Code; it is being used to deprive them of exemptions to which they are otherwise entitled. Thus, while *Marrama* approved the use of § 105 to enforce the Bankruptcy Code's grant of power to bankruptcy courts, the decision below used § 105 to override the Code's express limits on that power. *Norwest*, 485 U.S. at 206 (equitable powers of bankruptcy court "must and can only be exercised within the confines of the Bankruptcy Code"); *SEC v. United States Realty & Improvement Co.*, 310 U.S. 434, 455 (1940) ("A bankruptcy court . . . is guided by equitable doctrines and principles except in so far as they are inconsistent with the Act").

3. In a final argument, the United States contends that even if the bankruptcy court lacked the authority to surcharge Petitioner's exemption, that determination does not warrant review because the bankruptcy court *could* have simply imposed a $75,000 sanction on Petitioner for litigation misconduct. U.S. Br.

18. Although this Court has not yet squarely decided the question, Petitioner does not dispute that bankruptcy courts, like Article III courts, may well possess substantial inherent authority to sanction litigation misconduct, and they indisputably have been granted certain express powers to sanction. *See Marrama*, 549 U.S at 375-76; *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45-46 (1991); Fed. R. Bankr. P. 9011 (equivalent of Fed. R. Civ. P. 11).

But the court below did not impose a traditional sanctions order on Mr. Law for litigation misconduct. Instead, it surcharged Mr. Law's exempt property, and the two orders are not equivalent.[4] A sanctions order awarding costs or fees creates a post-petition debt that the trustee may pursue (even after discharge) in accordance with applicable collection law. Importantly, exempt property is not available to satisfy such debts. *See, e.g.*, Fed. R. Civ. P. 64(a); Cal. Code Civ. P. § 487.020(a); *cf.* 11 U.S.C. §§ 522(c), (k) (allowing creditors to take exempted property in specified circumstances not present here). Conversely, the effect of surcharging exempted property is that it is returned to the estate, such that it *is* immediately available to satisfy creditors, including the trustee and counsel. Surcharging an exemption thus gives creditors access to exempted property in a way that a sanctions order awarding attorney's fees or costs does not. And in doing so, the surcharge order frustrates the legislative policy judgment reflected in the carefully

[4] Indeed, it is clear that the bankruptcy court was drawing a distinction between surcharging and sanctioning Mr. Law. The court entered two separate orders, one order surcharging Mr. Law's homestead exemption of $75,000, and the second order imposing sanctions on Mr. Law for violations of his discovery obligations in the amount of $3,520. Pet. App. B, at 2.

constructed system of exemptions to give debtors "a new opportunity in life and a clear field for future effort." *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934); *see Rousey*, 544 U.S. at 325.[5]

The United States thus misses the mark in claiming that a federal court's inherent authority to issue sanctions orders trumps state law provisions declaring certain property exempt from execution of a money judgment. *See* U.S. Br. 20. It is *federal law* that requires bankruptcy courts to give effect to state law exemptions. *See* 11 U.S.C. § 522(d); *Owen v. Owen*, 500 U.S. 305, 306 (1991) ("The Bankruptcy Code allows the *States* to define what property a debtor may exempt from the bankruptcy estate that will be distributed among his creditors." (emphasis added)). The question here is whether, as a matter of federal law, Congress intended to give bankruptcy courts the equitable power to make available to creditors property that Congress has expressly said is exempt from distribution in § 522. This Court should

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[5] Thus, the government's argument that what happened below is simply a matter of setoff (or offset), in which the bankruptcy court authorized the Trustee to keep the $75,000 of Petitioner's homestead exemption rather than ordering that the money be paid to Petitioner while simultaneously imposing a sanctions order requiring Petitioner to pay the Trustee $75,000, rests on a false premise. *See* U.S. Br. 20. Exempted property cannot be used for setoff. The "long-standing rule in California and most other jurisdictions is that where a creditor cannot levy on exempt property, he cannot obtain a setoff against that property either." *Standard Ins. Co. v. Saklad*, 127 F.3d 1179, 1182 (9th Cir. 1997); *see also In re Ter Bush*, 273 B.R. 625, 631-32 (Bankr. S.D. Cal. 2002) (finding that California courts would not permit setoff against the homestead exemption because the "homestead exemption is highly valued in the State of California from a public policy point of view"). Because exempted property is not available to the estate, the court may not order that it be paid to the Trustee to offset a sanctions order charging the debtor for the Trustee's litigation expenses.

resolve that question and resolve it in favor of upholding the exemption scheme set out in § 522 for the reasons stated above.

In sum, a bankruptcy court may use its considerable powers to issue sanctions orders, and the threat of such an order levying attorney's fees or other punishments represents a significant deterrent to improper behavior. But it is equally clear that a bankruptcy court may not, as it did here, order a debtor to use its exempted property to pay those sanctions.[6] That policy judgment has already been made by Congress, which "has balanced the difficult choices that exemption limits impose on debtors with the economic harm that exemptions visit on creditors." *Schwab v. Reilly*, 130 S. Ct. 2652, 2667 (2010). Whether a court chooses to label its order a sanction or a surcharge, the choice that really matters is the one Congress made in declaring certain property beyond the reach of creditors, and the United States is wrong to suggest otherwise.

CONCLUSION

The petition for certiorari should be granted.

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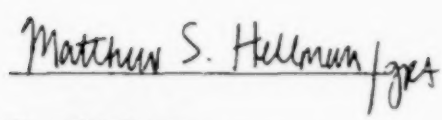
[6] Of the cases the government cites in support of its argument, only one arises in the bankruptcy context, and that case expressly acknowledges that its holding is contrary to the weight of authority. *See In re Ward*, 210 B.R. 531, 536 (Bankr. E.D. Va. 1997) (acknowledging that the "general rule in Virginia is that a creditor may not exercise a right of setoff against exempt property," but permitting setoff nonetheless).

Respectfully submitted,



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AMICUS CURIAE BRIEF

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QUESTION PRESENTED

Whether the bankruptcy court had the power, pursuant either to its authority under 11 U.S.C. 105(a) or to its inherent power to sanction misconduct, to bring the value of the debtor's homestead exemption into the bankruptcy estate through an equitable surcharge in order to compensate the estate for litigation costs incurred as a result of the debtor's bad-faith litigation conduct.

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INTEREST OF THE UNITED STATES

The scope of the bankruptcy courts' authority to sanction debtor misconduct, and to compensate parties injured by such misconduct, is an issue of substantial importance to the United States. The Attorney General appoints United States Trustees to supervise the administration of bankruptcy cases and trustees throughout the country. 28 U.S.C. 581-589a. United States Trustees "serve as bankruptcy watchdogs to prevent fraud, dishonesty, and overreaching in the bankruptcy arena." H.R. Rep. No. 595, 95th Cong., 1st Sess. 88 (1977). By statute, United States Trustees "may raise and may appear and be heard on any issue in any case or proceeding under" Title 11. 11 U.S.C. 307.

The United States is also the largest creditor in the Nation, and numerous federal agencies frequently appear as creditors in Chapter 7 cases. Because a bankruptcy estate's assets are typically scarce, the United States has an interest in preventing and deterring Chapter 7 debtors from diminishing or hiding assets that should be used to satisfy claims of the United States.

STATEMENT

1. a. A debtor commences a voluntary bankruptcy case by filing a petition in bankruptcy court. 11 U.S.C. 301. Individual debtors typically file for relief under Chapter 7 or Chapter 13 of the Bankruptcy Code. The present case arises under Chapter 7, which provides for a liquidation of a debtor's non-exempt assets in exchange for a discharge of pre-petition debts. 11 U.S.C. 701 *et seq.* After filing a voluntary bankruptcy petition, a debtor must file a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs. 11 U.S.C. 521(a)(1); Fed. R. Bankr. P. 1007(c); Fed. R. Bankr. P. Official Forms 6 (Schedules) and 7 (Statement of Financial Affairs)). A debtor must file those documents under penalty of perjury. See Fed. R. Bankr. P. 1008.

Commencement of a Chapter 7 case creates an "estate" that includes all of the debtor's "legal or equitable interests * * * in property as of the commencement of the case." 11 U.S.C. 541(a). The debtor must surrender all non-exempt estate property to the Chapter 7 trustee, who serves as the sole representative and fiduciary for the estate. 11 U.S.C. 323; *CFTC* v. *Weintraub*, 471 U.S. 343, 352 (1985). The Chapter 7 trustee takes custody of such property, liquidates it,

and disburses the proceeds to creditors in accordance with their rights and priorities under the Code. 11 U.S.C. 507, 521(a)(3) and (4), 704(a)(1), 726.

The Bankruptcy Code accords a high priority to paying administrative expenses incurred by the estate. 11 U.S.C. 507(a)(2); see 11 U.S.C. 503(b) (administrative expenses include "the actual, necessary costs and expenses of preserving the estate"). By statute, a Chapter 7 trustee is paid a flat fee of $60. 11 U.S.C. 330(b). In cases where nonexempt assets are available for liquidation and disbursement, the trustee may also receive a commission based on the amount of "moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor." 11 U.S.C. 326(a).

The Bankruptcy Code ordinarily "give[s] the bankrupt a fresh start with such exemptions and rights as the [bankruptcy] statute left untouched." *Burlingham* v. *Crouse*, 228 U.S. 459, 473 (1913). A debtor is entitled to claim various statutory exemptions to prevent the liquidation or distribution of specific categories of property. 11 U.S.C. 522. Generally speaking, "property exempted" from the estate "is not liable during or after the case for any debt of the debtor that arose * * * before the commencement of the case." 11 U.S.C. 522(c).

Exemptions may be defined by state or federal law. See 11 U.S.C. 522(b)(1)-(2) and (d). The State of California (where this bankruptcy was filed) requires debtors in California to use the exemptions defined by state law. See Cal. Civ. Proc. Code §§ 703.130, 703.140 (West Supp. 2013). As relevant here, California currently provides for a "homestead" exemption of between $75,000 and $175,000 (depending on the debt-

or's household circumstances) for a debtor's interest in his principal dwelling. See *id.* §§ 704.710(c) (West 2009), 704.730 (West Supp. 2013). When a debtor claims eligible property as exempt and no "party in interest" objects, the federal Bankruptcy Code ordinarily excludes such property from the bankruptcy estate. See 11 U.S.C. 522(*l*).

b. Section 105 of the Bankruptcy Code, 11 U.S.C. 105, sets forth the powers of courts adjudicating bankruptcy cases. Section 105(a) provides that the "court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" Title 11 of the United States Code. 11 U.S.C. 105(a). Section 105(a) further states that "[n]o provision" of Title 11 "providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." *Ibid.*

2. In January 2004, petitioner filed a voluntary Chapter 7 bankruptcy petition. J.A. 56a. Respondent was appointed to serve as the Chapter 7 trustee. *Ibid.*

a. Petitioner's bankruptcy schedules listed petitioner's home as the only major asset of the bankruptcy estate. J.A. 56a; S.J.A. 1a-8a. The schedules represented that the home was worth $363,348 and that it was encumbered by two liens totaling $304,085.56. J.A. 56a-57a; S.J.A. 3a-4a, 9a. Petitioner listed a first priority mortgage lien for $147,156.52, held by Washington Mutual Bank, and a second priority lien for $156,929.04, held by "Lin's Mortgage & Associates." J.A. 56a-57a; S.J.A. 9a. Petitioner also claimed a homestead exemption of $75,000 pursuant to Cal. Civ.

Proc. Code § 704.730(a)(2) (West 2009). J.A. 56a; S.J.A. 8a.

Petitioner's schedules thus represented that the total amount of the claimed homestead exemption plus the two listed liens exceeded the value of the house. The practical implication of those figures was that the home was not a source of value that the bankruptcy estate could use to satisfy petitioner's other creditors. Petitioner's homestead exemption became final without opposition from respondent. J.A. 60a. Years of litigation ensued, however, concerning the validity of the second lien and associated deed of trust. See J.A. 83a-84a.

Through his bankruptcy, petitioner sought to discharge debts arising from an October 1999 money judgment of $131,821.74 entered against him in a suit in Los Angeles Superior Court. J.A. 86a; S.J.A. 9a-10a. In June 1999—while that action was pending—petitioner executed and obtained notarization of two separate promissory notes in favor of a person named Lili Lin to document a loan of $168,000 that he alleged he had received a year earlier. J.A. 85a-86a. The same month, petitioner recorded a deed of trust in favor of Lili Lin. J.A. 86a. That alleged loan became the disputed second lien when petitioner later filed his bankruptcy petition.

Petitioner was acquainted with a woman named Lili Lin, who lived in Artesia, California. J.A. 86a. Although she had never loaned money to petitioner, petitioner delivered to her the disputed deed of trust and promissory note in June 1999. J.A. 86a-87a. Petitioner later asked Lin to accept a check from him for $168,000 in satisfaction of the loan, and then to return the money to him. J.A. 87a. Lin refused. *Ibid.*

In February 2000 (after the judgment of $131,821.74 had been entered against petitioner), County Records Research received a letter purporting to be from Lin and seeking to institute foreclosure proceedings on petitioner's home. *Ibid.* Lin stated that she had not sent that letter. *Ibid.* Around the same time, Lin received a packet of documents that, had she signed them, would have transferred to petitioner's ex-wife any interest she had in the disputed second lien. *Ibid.* Lin declined to sign the documents and later entered into a stipulated judgment with respondent, in which Lin stated that she had never loaned money to petitioner and that petitioner had attempted to involve her in a sham foreclosure of the disputed deed of trust. J.A. 87a-89a.

When petitioner filed his bankruptcy petition in 2004, he listed "Lin's Mortgage & Associates," purportedly located in Guangzhou, China, as the holder of the second lien on his residence. J.A. 88a. Respondent filed an adversary proceeding asserting fraud against Lili Lin. *Ibid.* In his opposition, petitioner alleged that he had received the second-lien loan from a *different* woman named Lili Lin who resided in China. J.A. 89a. In the extensive proceedings that followed, petitioner could not produce evidence to establish the form in which he had received the money from Lin, and he offered shifting accounts of how and to whom those funds were paid. J.A. 84a-85a. Although Lin of China purportedly never traveled to the United States during the pendency of the bankruptcy, did not speak English, and was often unrepresented by counsel, numerous pleadings in the bankruptcy court advocating for petitioner's position were filed in her name. J.A. 89a-92a. The bankruptcy court ultimately con-

cluded that no person named Lili Lin—either from Artesia or from China—had ever loaned money to petitioner in exchange for the disputed deed of trust. J.A. 91a-92a.

Respondent's investigation into the validity of the scheduled second lien—and petitioner's resistance to the investigation—spawned years of litigation, including discovery disputes, more than a dozen appeals to the Bankruptcy Appellate Panel (BAP), and several appeals to the Ninth Circuit. J.A. 56a n.4. In 2005, the bankruptcy court entered a default judgment against petitioner denying discharge of his debts in bankruptcy. See No. CC-05-1352, 2006 WL 6810957, at *2 (B.A.P. 9th Cir. 2006). Petitioner appealed the denial of discharge, and both the BAP and the court of appeals affirmed. *Id.* at *3-*4; 309 Fed. Appx. 95 (9th Cir. 2009); see J.A. 133a.

In March 2006, with permission from the bankruptcy court, respondent sold petitioner's residence. J.A. 57a & n.5. Although petitioner had represented on the schedules he filed with his petition that his home was worth $363,348, S.J.A. 4a, 8a, the home in fact sold for $680,000, J.A. 138a. After paying all costs of the sale and satisfying the (undisputed) first lien, the bankruptcy estate was left with $208,777.91. J.A. 57a n.5. If petitioner had not invented the false second lien, that amount would have been sufficient to pay petitioner's (real) creditors, to pay respondent's costs, to pay petitioner the $75,000 value of his homestead exemption, and to return surplus funds to petitioner. J.A. 65a. As a result of the litigation surrounding that fictitious lien, however, respondent (on behalf of the estate) had incurred more than $450,000 in legal fees. J.A. 66a.

b. When respondent moved to sell petitioner's house in 2006, he also filed a motion to "surcharge" petitioner's $75,000 homestead exemption in order to recoup some of the expenses the estate had incurred in resisting petitioner's attempt to shield equity in his home with the fraudulent second lien. J.A. 57a. The bankruptcy court authorized the surcharge, explaining that petitioner's conduct was "the direct cause of the expenses that have been incurred by [respondent]," and that respondent was likely to incur additional related expenses. J.A. 58a.

Petitioner appealed, and the BAP reversed because the surcharge was based on the disputed validity of the second lien, which at that point had not yet been determined. J.A. 59a.

c. In April 2008, respondent filed a second motion to surcharge petitioner's homestead exemption. Respondent alleged that petitioner had used the fictitious second lien to attempt to defraud his creditors; that petitioner had twice perjured himself, first by listing the fraudulent lien in his schedules and then by attaching a fraudulent promissory note to his motion to reconsider the order approving the sale of his residence; and that petitioner had invented Lili Lin of China in order to frustrate respondent's administration of the estate and to exhaust the estate's assets. See J.A. 61a.

The bankruptcy court found that petitioner had attempted to perpetrate a fraud on the court by claiming the second lien on his residence. J.A. 92a. The court concluded that "[t]he preponderance of the evidence clearly shows that the loan was a fiction, meant to preserve [petitioner's] equity in his residence beyond what he was entitled to exempt as a homeowner,

and a fraud on his creditors and the court." *Ibid.* (emphasis omitted). The bankruptcy court further found that, if petitioner had not fraudulently invented and tirelessly defended the validity of the second deed of trust, "ample funds would have been available to pay [petitioner's] creditors and [respondent's] costs" and to pay petitioner both his full homestead exemption and surplus funds. J.A. 92a-93a.

During the extensive litigation over the fraudulent second lien, however, the bankruptcy estate had incurred more than $450,000 in expenses as a "direct result of [petitioner's] active misrepresentations to [respondent] and to the court." J.A. 93a-94a. Recognizing that "the actual costs" of petitioner's misconduct "to the estate far exceed $75,000 (the exemption to which [petitioner] would otherwise be entitled)," the bankruptcy court granted respondent's motion to surcharge petitioner's homestead exemption in its entirety. J.A. 97a. The practical effect of the surcharge was to deny petitioner the $75,000 portion of the residence-sale proceeds to which he would otherwise have been entitled under the California homestead exemption.

d. Petitioner appealed to the BAP, which affirmed in an unpublished decision. J.A. 54a-80a. The BAP noted a prior Ninth Circuit holding "that a bankruptcy court may equitably surcharge a debtor's statutory exemptions when reasonably necessary to protect the integrity of the bankruptcy process and to ensure that a debtor receives as exempt property an amount no more than what is permitted by the Bankruptcy Code." J.A. 68a (citing *Latman* v. *Burdette*, 366 F.3d 774, 786 (9th Cir. 2004)). The panel also relied on a previous BAP decision upholding a bankruptcy court's

surcharge of a debtor's homestead exemption to reimburse the estate for expenses incurred as a result of the debtor's misconduct. J.A. 69a-70a (citing *In re Onubah*, 375 B.R. 549, 553-558 (B.A.P. 9th Cir. 2007)). The BAP concluded that the surcharge against petitioner's homestead exemption was not an abuse of discretion because the "second trust deed loan was a fiction" and a fraud on the court. J.A. 72a.

e. The court of appeals affirmed. J.A. 50a-53a. The court explained that "[t]he BAP properly affirmed the bankruptcy court's order granting [respondent's] surcharge motion because the surcharge was calculated to compensate the estate for the actual monetary costs imposed by [petitioner's] misconduct, and was warranted to protect the integrity of the bankruptcy process." J.A. 52a (citing *Latman* and *Onubah*).

SUMMARY OF ARGUMENT

The modern bankruptcy system balances competing interests by affording honest debtors a fresh start free of crushing debt while maximizing compensation for creditors. Dishonest debtors have ample opportunity to abuse the system by attempting to shield assets that should be distributed to creditors. Petitioner attempted to do exactly that by engaging in a massive and protracted fraud against the bankruptcy court and respondent. Although that fraud was detected and petitioner's creditors were paid in full, respondent incurred substantial litigation costs during the process of uncovering the fraud. The equitable surcharge on petitioner's otherwise-exempt homestead interest was a permissible exercise of the bankruptcy court's authority to penalize litigation miscon-

duct by shifting some of the costs of that misconduct to the culpable party.

A. Section 105(a) of the Bankruptcy Code authorizes a bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Code. The court's surcharge order in this case was necessary and appropriate to carry out Code provisions that require honest disclosure of debtors' assets and liabilities, limit the amount of property that is exempt from distribution to creditors, and require a trustee to uncover fraud in a debtor's reported financial affairs. The validity of an order under Section 105(a) does not depend on specific authorization elsewhere in the Code—if it did, Section 105(a) would be surplusage.

The surcharge order was also necessary and appropriate to prevent an abuse of process. If petitioner had succeeded in his scheme, he would have effectively used the power of the bankruptcy court to cheat his creditors out of money they were due, while retaining significantly more property than the Code would allow. Even after his fraud was uncovered, a surcharge was necessary to prevent an abuse of process because without it, the entire cost of petitioner's fraudulent scheme would have fallen on respondent. If bankruptcy courts were disabled from shifting the costs of litigation misconduct to a culpable debtor, debtor misconduct would likely become more prevalent, and trustees would face pronounced disincentives to the vigorous performance of their duties.

B. The bankruptcy court's surcharge order was equally justified by the court's inherent authority to sanction bad-faith litigation conduct. That power transcends the statutes or rules that govern any par-

ticular case and includes the authority to order a litigant to compensate his opponent for costs associated with vexatious and bad-faith conduct in the proceedings. Longstanding historical practice confirms a bankruptcy court's inherent equitable authority to police the litigants before it. That authority was codified in the pre-Code Bankruptcy Act. When it enacted and subsequently amended Section 105(a), Congress confirmed that power by authorizing bankruptcy courts to take measures "necessary or appropriate" to carry out provisions of the Code or to prevent an abuse of process.

C. Nothing in the Bankruptcy Code prohibits a court from equitably surcharging otherwise-exempt property as a sanction for bad-faith litigation conduct. As this Court held in *Marrama* v. *Citizens Bank*, 549 U.S. 365 (2007), a dishonest debtor forfeits the protections afforded by the Bankruptcy Code when he engages in misconduct such as attempting to hide assets. Here, petitioner attempted to use fraud to achieve a result that no law entitles him to—a discharge of his debts without a loss of property. The equitable surcharge imposed in this case did not reflect any attempt by the bankruptcy court to substitute its own policy judgment for that of Congress. It instead reflected the court's recognition that, although the Code ordinarily would have entitled petitioner to leave bankruptcy with certain property intact and unencumbered, petitioner gave up that right when he flouted his legal obligations.

The Code's provision of other sanctions for certain bad-faith conduct on the part of debtors did not limit the bankruptcy court's authority to impose an equitable sanction here. None of the sanctions that petition-

er identifies would have punished petitioner for his egregious behavior; none would have compensated respondent for the enormous costs petitioner imposed on him; and none would deter the type of behavior at issue here. This Court has long held that a court's inherent authority to sanction bad-faith litigation conduct is not limited by the availability of other statutory sanctions.

ARGUMENT

BANKRUPTCY COURTS' STATUTORY AND INHERENT AUTHORITY TO SANCTION DEBTOR MISCONDUCT INCLUDES THE RIGHT TO DENY DISHONEST DEBTORS BENEFITS CONFERRED BY THE BANKRUPTCY CODE ON HONEST DEBTORS

As this Court has often noted, a primary goal of the modern bankruptcy system is to provide honest but unfortunate debtors with a fresh start. Petitioner is not an honest but unfortunate debtor. Petitioner's attempts to perpetrate a massive fraud on the bankruptcy court (and his bankruptcy estate) ultimately cost the estate hundreds of thousands of dollars and tied up the court and litigants in several years of adversary proceedings. When a debtor engages in such egregious bad-faith conduct, the bankruptcy court has statutory and inherent authority to sanction the debtor by imposing an equitable surcharge on otherwise-exempt property.

A. The Bankruptcy Court's Equitable Surcharge Was Authorized By 11 U.S.C. 105(a)

The equitable powers of bankruptcy courts are codified in 11 U.S.C. 105(a), which provides:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out

> the provisions of [Title 11 of the United States Code]. No provision of [Title 11] providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Section 105(a) thus broadly authorizes a bankruptcy court to exercise its equitable authority by issuing "any order" it deems "necessary or appropriate" either "to carry out the provisions of" the Bankruptcy Code or to vindicate the court's own authority, including by "prevent[ing] an abuse of process." *Ibid.*

The Bankruptcy Code also requires debtors to disclose to the bankruptcy court their assets and liabilities. 11 U.S.C. 521. The rules implementing the Code require that such disclosures be made under penalty of perjury. Fed. R. Bankr. P. 1008. The Code also limits the amount of property a debtor may retain free of pre-petition liens at the end of a successful bankruptcy (and while the bankruptcy is pending). 11 U.S.C. 522. The Code further provides that a Chapter 7 trustee (like respondent) "shall," *inter alia*, "collect and reduce to money the property of the estate" and "investigate the financial affairs of the debtor." 11 U.S.C. 704(a)(1) and (4). Together, those (and other) provisions help to effectuate the twin goals at the core of the federal bankruptcy system: giving the honest but unfortunate debtor a fresh start, and ensuring the maximum possible distribution to creditors. See, *e.g.*, *Stellwagen* v. *Clum*, 245 U.S. 605, 617 (1918); *Williams* v. *United States Fid. & Guar. Co.*, 236 U.S. 549, 554-555 (1915).

By making it appear that his home was not a source of value for his creditor, petitioner attempted through fraud to free himself of a money judgment without giving up any portion of his interest in his only major asset. The bankruptcy court's equitable surcharge in this case was designed to penalize that attempted fraud on the court, and to shift from respondent to petitioner a portion of the costs that petitioner's fraud had caused. The court's order was necessary and appropriate to carry out the Code provisions described in the preceding paragraph, and it was therefore authorized by Section 105(a).

Petitioner argues (Br. 16-17) that a court "carr[ies] out" a provision of the Code only by enforcing its express provisions. That parsimonious reading would render largely superfluous Section 105(a)'s general authorization to issue orders "necessary or appropriate to carry out provisions of the" Code. 11 U.S.C. 105(a). To be sure, Section 105(a) is not itself a source of substantive rights and obligations. Section 105(a)'s evident purpose, however, is to confirm the bankruptcy courts' broad authority to devise effective remedial measures to enforce, and redress violations of, rights and duties created by other provisions of law. Section 105(a) could not achieve that objective if (for example) a bankruptcy court could enforce Section 521's honest-disclosure requirement only by requiring a debtor to honestly disclose his assets and liabilities. To ensure that Section 105(a) is given meaningful effect, that provision must be read to authorize bankruptcy courts to take actions beyond those specifically authorized or required by other provisions of the Code.

The court's surcharge was equally justified as necessary and appropriate to "prevent an abuse of pro-

cess." 11 U.S.C. 105(a). As noted, petitioner attempted to utilize the bankruptcy court in a fraudulent scheme to deprive his tort-judgment creditor of satisfaction of a lawful debt. The diligent efforts of respondent and the court prevented such an abuse. In petitioner's view, he should suffer no adverse consequence as a result of his bad-faith litigation conduct. That result would leave an abuse of process uncorrected by forcing respondent to bear the enormous costs he incurred (on behalf of the bankruptcy estate) to uncover and thwart petitioner's fraud on the court. The bankruptcy court acted well within its equitable discretion by sanctioning petitioner in order to partially offset those costs.

"Perhaps to a greater degree than any other segment of our justice system, Bankruptcy depends on the integrity of the information supplied by its principal participant, the debtor." *In re Little*, 245 B.R. 351, 353-354 (Bankr. E.D. Mo.), appeal dismissed, 253 B.R. 427 (B.A.P. 8th Cir. 2000). The Code does not contemplate that either "the trustee [or] the creditors should be required to engage in a laborious tug-of-war to drag the simple truth into the glare of daylight." See *In re Tully*, 818 F.2d 106, 110 (1st Cir. 1987). Honest and full disclosure of a debtor's assets is particularly important in cases filed under Chapter 7. Because Chapter 7 generally grants the debtor a complete discharge of his pre-petition debts in exchange for the debtor's release to creditors of all his pre-petition and non-exempt property, see 11 U.S.C. 725, 726, 727, a Chapter 7 debtor has a clear incentive to attempt to conceal assets.

Dishonesty and fraud by debtors therefore strike at the foundation on which Chapter 7 is premised. If

the bankruptcy court lacked adequate mechanisms to deter and punish debtor fraud, the inducement to systemic misconduct would threaten the integrity of the bankruptcy system. The Code charges the Chapter 7 trustee with investigating the debtor's financial affairs, see 11 U.S.C. 704(a)(4), but trustees receive only a flat $60 fee per case plus a commission based on the amount of "moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor," 11 U.S.C. 326(a) and 330(b). According to data maintained by the Executive Office for the United States Trustees, such nonexempt assets have been available for liquidation and disbursement in less than five percent of all Chapter 7 cases since 2005. If the debtor is dishonest and the trustee must discover and claim concealed assets, the typical costs of basic case administration will vastly exceed the $60 statutory fee, and they may also exceed any commission paid to the trustee for assets that are discovered and disbursed. The bankruptcy courts' authority to respond to debtor misconduct with meaningful sanctions is therefore essential both to enforce the provisions of the Code and to prevent abuses of process.

B. The Bankruptcy Court's Equitable Surcharge Was Also A Valid Exercise Of The Court's Inherent Authority

As applied to the circumstances of this case, Section 105(a) simply confirms the bankruptcy court's inherent authority to impose appropriate sanctions for fraudulent and abusive litigation conduct. This Court has long held that judicial bodies possess inherent authority to sanction misconduct, authority that is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious dis-

position of cases." *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 43 (1991) (quoting *Link* v. *Wabash R.R.*, 370 U.S. 626, 630-631 (1962)). A court's imposition of sanctions for litigation misconduct "transcends [the] court's equitable power concerning relations between the parties and reaches a court's inherent power to police itself." *Id.* at 46. It encompasses the authority to order an abusive litigant to compensate his opponent for litigation expenses incurred in response to abuses of the judicial process, including by assessing attorney's fees against a party who has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Id.* at 45-46 (quoting *Alyeska Pipeline Serv. Co.* v. *Wilderness Soc'y*, 421 U.S. 240, 258-259 (1975)). A court may exercise such power even when alternative sanctions are authorized by statute or rule. See *id.* at 49 ("[T]he inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct.").

1. Bankruptcy courts "are courts of equity and 'appl[y] the principles and rules of equity jurisprudence.'" *Young* v. *United States*, 535 U.S. 43, 50 (2002) (brackets in original) (quoting *Pepper* v. *Litton*, 308 U.S. 295, 304 (1939)). As such, bankruptcy courts have a duty to thwart fraud in their proceedings, including by "sift[ing] the circumstances surrounding any claim to see that injustice or unfairness is not done in administration of the bankrupt estate." *Pepper*, 308 U.S. at 307-308; see *Holmberg* v. *Armbrecht*, 327 U.S. 392, 396-397 (1946). Although a litigant need not have led a "blameless li[fe]" to invoke protections offered by an equity court, see *Loughran* v. *Loughran*, 292 U.S. 216, 229 (1934), he forfeits such protections when he fails to "act[] fairly and without fraud or

deceit as to the controversy in issue," *Precision Instrument Mfg. Co.* v. *Automotive Maint. Mach. Co.*, 324 U.S. 806, 814-815 (1945).

This Court has recognized that, "even if § 105(a) had not been enacted, the inherent power of every court to sanction 'abusive litigation practices' might well provide an adequate justification" for a bankruptcy court to take action not specifically authorized in the Code in order to remedy misconduct by a debtor. *Marrama* v. *Citizens Bank*, 549 U.S. 365, 375-376 (2007) (quoting *Roadway Express, Inc.* v. *Piper*, 447 U.S. 752, 765 (1980)). Although "Congress may intervene and guide or control the exercise of the courts' discretion," this Court "do[es] not lightly assume that Congress has intended to depart from established principles." *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305, 313 (1982); see *id.* at 320 (noting that "a major departure from the long tradition of equity practice should not be lightly implied"). Nothing in Section 105(a) suggests that Congress intended to curtail, in the bankruptcy context, the usual broad power of courts to sanction bad-faith litigation conduct. Rather, at the very least, Section 105(a) confirms that bankruptcy courts retain their traditional equitable authority to detect, prevent, and remedy a fraud against the court.

Here, the bankruptcy court found that petitioner had engaged in systemic abuse of the bankruptcy process, including through misrepresentations to respondent and the court. See J.A. 92a. The court further found that respondent's "reasonable costs of coping with [petitioner's] deception far exceed $75,000, the exemption to which [petitioner] otherwise would be entitled." J.A. 93a (emphasis omitted).

Even in the absence of Section 105(a)'s explicit authorization, those findings would have fully justified the imposition of a $75,000 sanction as an exercise of the bankruptcy court's inherent authority to penalize petitioner's litigation misconduct and vindicate the integrity of the court's own processes. See 2 *Collier on Bankruptcy* ¶ 105.02[6][b] at 105-33 to 105-34 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2009) (*Collier*) ("Bankruptcy courts have the inherent power to regulate the practice of law before them. Whether this power is inherent, and thus need not be stated, or is found in the various words and phrases of section 105, is largely irrelevant. Courts may thus regulate who appear before them, and may sanction attorneys or their clients for abuses of process and other harms.").

2. This Court "will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure." *Hamilton* v. *Lanning*, 130 S. Ct. 2464, 2473 (2010) (quoting *Travelers Cas. & Sur. Co. of Am.* v. *Pacific Gas & Elec. Co.*, 549 U.S. 443, 454 (2007)). The enactment of Section 105(a) cannot reasonably be understood to reduce bankruptcy courts' long-established inherent equitable powers to sanction litigants who engage in bad-faith litigation conduct. Rather, Section 105(a) carried forward Section 2(15) of the pre-Code Bankruptcy Act, which provided that a bankruptcy court may "issue such process, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of [the] Act." Bankruptcy Act, ch. 541, § 2(15), 30 Stat. 546 (1898) (11 U.S.C. 11(15) (1925)). Indeed, whereas former Section 2(15) authorized

measures "necessary" to enforce the bankruptcy laws, Section 105(a) authorizes the issuance of any order that is "necessary or appropriate" to carry out the provisions of the Code. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, ch. 1, § 105, 92 Stat. 2555; see H.R. Rep. No. 595, 95th Cong., 1st Sess. 316 (1977) (stating that Section 105 granted "increased powers" to bankruptcy courts compared to Section 2(15)).

In 1986, Congress amended Section 105(a) by adding the second sentence:

> No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, § 203, 100 Stat. 3097. That sentence serves in part to make clear that, if a particular order is substantively within the bankruptcy court's authority, the court may act without a specific request from a party. Contrary to petitioner's contention (Br. 37), however, the added sentence does not focus on judicial actions specifically authorized elsewhere in the Code. Rather, the added text authorizes the court "to enforce or implement court orders or rules, or to prevent an abuse of process," and to take any subsidiary steps "necessary or appropriate" to achieve those ends.

As the leading bankruptcy treatise explains, the 1986 amendment to Section 105(a) "broadened the ability of bankruptcy judges to manage their own docket, by explicitly authorizing them to raise, on their own motion, issues which are necessary to en-

force their jurisdiction." 2 *Collier* ¶ 105.LH[4] at 105-109 (16th ed. 2011); see 1 *Collier Bankruptcy Manual*, ¶ 105.02[1][b] at 105-7 (Alan N. Resnick & Henry J. Sommer eds., 4th ed. 2010) (noting that "[s]everal courts have held that the addition of the second sentence to section 105 indicates that Congress meant section 105 to serve as the statutory basis for the civil contempt power of bankruptcy judges"). Far from constraining bankruptcy courts' inherent authority to sanction bad-faith litigation conduct, Section 105(a) confirms the breadth of that authority. The equitable surcharge in this case was a permissible exercise of the powers described in Section 105(a) and of the bankruptcy court's pre-existing inherent authority.

C. Nothing In The Bankruptcy Code Prohibits A Bankruptcy Court From Relying On Section 105(a) Or Its Inherent Authority To Equitably Surcharge Otherwise-Exempt Property As A Sanction For Bad-Faith Litigation Conduct

Although bankruptcy courts retain broad equitable authority, their "equitable powers * * * must and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington* v. *Ahlers*, 485 U.S. 197, 206 (1988); see *SEC* v. *United States Realty & Improvement Co.*, 310 U.S. 434, 455 (1940) ("A bankruptcy court * * * is guided by equitable doctrines and principles except in so far as they are inconsistent with the [Bankruptcy] Act."). The same is true of a court's inherent authority, which a court may not exercise in violation of an express statutory limit. *Chambers*, 501 U.S. at 47. As discussed, however, courts will not lightly assume that Congress intended to restrict courts' traditional equitable pow-

ers. See *ibid.*; *Romero-Barcelo*, 456 U.S. at 313, 320. Contrary to petitioner's contentions (Br. 18-36), nothing in the Bankruptcy Code precluded the bankruptcy court from sanctioning petitioner's bad-faith litigation conduct by equitably surcharging his otherwise-exempt property.

1. Section 522 does not preclude the court's equitable surcharge in this case

Petitioner's primary contention (see Br. 18-36) is that a bankruptcy court's authority with respect to exempt property is entirely limited by the specific Code provisions that address such property. Those provisions are found primarily in 11 U.S.C. 522, which defines what property a debtor may claim as exempt and sets forth exceptions to the general rule that a debtor retains his exempt property at the conclusion of the bankruptcy case. Contrary to petitioner's position, Section 522 neither gives debtors an absolute right to retain exempt property nor limits a court's authority to impose an equitable surcharge on such property as a sanction for bad-faith litigation conduct.

a. Petitioner forfeited the protection afforded to honest debtors by Section 522

Sections 522(c) and (k) prohibit the use of exempt property to pay most pre-petition debts and administrative expenses. Petitioner argues (Br. 18-23) that those provisions barred the bankruptcy court from equitably surcharging his otherwise-exempt homestead interest in order to pay some of respondent's fees and costs. Petitioner repeatedly invokes this Court's oft-stated insight that one of the core purposes of our bankruptcy system is to allow debtors to exit bankruptcy with sufficient property to enjoy a "fresh

start." Br. 2, 10, 19 n.6, 20, 24, 29. Petitioner fails to acknowledge, however, that the Code offers a fresh start "only to an 'honest but unfortunate debtor.'" *Cohen* v. *de la Cruz*, 523 U.S. 213, 217 (1998) (quoting *Grogan* v. *Garner*, 498 U.S. 279, 287 (1991)).

In *Marrama*, *supra*, this Court held that a debtor who abuses the bankruptcy process may forfeit a statutory right or protection granted to honest debtors. 549 U.S. at 374. The Bankruptcy Code states that a Chapter 7 debtor "may convert" his case to a Chapter 13 case "at any time." 11 U.S.C. 706(a). The Chapter 7 debtor in *Marrama* conducted himself in "bad faith" during the bankruptcy proceedings, including by concealing assets in order to retain more property than the Code would allow after discharging his debts through Chapter 7. 549 U.S. at 367-369. When the debtor's bad faith was discovered, he attempted to convert his case to a Chapter 13 bankruptcy so that he could retain the no-longer-concealed assets. *Id.* at 368-369. Declaring that "there is no 'Oops' defense to the concealment of assets," the bankruptcy judge denied the motion to convert notwithstanding Section 706(a)'s unqualified statement that a Chapter 7 debtor may convert his case to Chapter 13 "at any time." *Id.* at 369-370. This Court upheld the denial, reasoning that, although debtors generally "do possess an absolute right to convert their cases from Chapter 7 to Chapter 13," a debtor who commits fraud or hides assets is "not a member of the class of 'honest but unfortunate debtor[s]' that the bankruptcy laws were enacted to protect." *Id.* at 374 (brackets in original) (quoting *Grogan*, 498 U.S. at 287).

Section 522(k) reflects a congressional policy judgment that the typical honest debtor's interest in retaining exempt property should ordinarily supersede the federal interest in full payment of the estate's administrative expenses. The equitable surcharge imposed in this case did not reflect any disagreement with that general policy choice. Rather, the surcharge was premised on the bankruptcy court's case-specific determination that petitioner's dishonest conduct had caused the estate to incur expenses vastly greater than would otherwise have been necessary. Because Section 522(k) does not speak to the proper balancing of interests in that unusual circumstance, it does not "limit[] the authority of the [bankruptcy] court to take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor." *Marrama*, 549 U.S. at 374-375. "On the contrary, the broad authority granted to bankruptcy judges to take any action that is necessary or appropriate 'to prevent an abuse of process' described in § 105(a) of the Code, is surely adequate" to empower a bankruptcy court to deploy sanctions when a debtor engages in fraud, misrepresentation, or other misconduct. *Id.* at 275 (footnote omitted).[1]

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[1] Petitioner relies (Br. 21, 34) on commentary that the Commission on the Bankruptcy Laws of the United States offered on an unenacted bill that preceded the Code. The unenacted bill provided that "[a]n individual debtor * * * shall be allowed exemptions as provided in this section." H.R. Doc. No. 137, 93d Cong., 1st Sess. Pt. 2, at 125 (1973). The Commission opined that this provision would afford debtors an "unqualified" right to exempt property. *Id.* at 128. That stray statement sheds no meaningful light on the question presented here, however, both because the Code as ultimately enacted did not use the word "shall" in describ-

The bankruptcy court's findings regarding petitioner's bad-faith litigation conduct would have amply justified the court in imposing a $75,000 sanction as an exercise of the court's inherent authority to police the bankruptcy system. Standing alone, such an order would have raised no issue under Section 522(k). Petitioner's argument based on Section 522(k) depends entirely on the fact that the court employed the "equitable surcharge" mechanism, rather than ordering that the $75,000 homestead exemption be paid over to petitioner while simultaneously directing that petitioner pay the same sum to respondent. But "[t]he right of setoff (also called 'offset') allows entities that owe each other money to apply their mutual debts against each other, thereby avoiding 'the absurdity of making A pay B when B owes A.'" *Citizens Bank* v. *Strumpf*, 516 U.S. 16, 18 (1995) (quoting *Studley* v. *Boylston Nat'l Bank*, 229 U.S. 523, 528 (1913)). A federal court's ability to implement sanctions imposed in furtherance of its inherent authority supersedes contrary provisions of state law, including provisions that declare particular property to be exempt from execution of a money judgment. See, *e.g.*, *FTC* v. *Neiswonger*, 580 F.3d 769, 777 (8th Cir. 2009); *In re Ward*, 210 B.R. 531, 538 (Bankr. E.D. Va. 1997).

b. The Code's inclusion of specific exceptions applicable to exempt property does not impliedly prohibit the equitable surcharge in this case

Petitioner argues (Br. 23-28) that bankruptcy courts may not equitably surcharge the otherwise-

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ing a debtor's right to exempt property, and because the Commission's statement did not specifically address the scope of a bankruptcy court's authority to penalize bad-faith behavior.

exempt property of a fraudulent litigant because "Congress has stated with great detail and clarity in Section 522 the circumstances in which exempt property *may* be taken from a debtor." Br. 23. Petitioner's statutory analysis is fundamentally unsound. By enacting specific provisions governing exempt property (including exceptions to the general rule that a debtor should retain exempt property unencumbered), Congress did not leave the bankruptcy courts powerless to remedy and deter litigation abuses, particularly abuses that are not specifically addressed in the Code.

i. None of the Section 522 provisions invoked by petitioner specifically addresses the scope of a court's authority to prevent or remedy a litigant's attempted fraud on the court. This case is therefore materially different from *D. Ginsberg & Sons, Inc.* v. *Popkin*, 285 U.S. 204 (1932), on which petitioner relies (Br. 12-13, 25-27). In *D. Ginsberg & Sons*, a district court issued a writ of ne exeat authorizing the arrest of the president of a bankrupt corporation, who was alleged to be on the verge of fleeing the jurisdiction in order to evade examination. 285 U.S. at 204-205. This Court held that, notwithstanding Section 2(15)'s grant of authority to issue such orders as may be necessary to enforce provisions of the bankruptcy law, the district court lacked power to arrest the corporate officer. *Id.* at 206-208.

The Court in *D. Ginsberg & Sons* relied on Section 9 of the Bankruptcy Act, which generally prohibited courts from arresting debtors in Section 9(a), but provided an exception in Section 9(b) when a debtor was about to leave the jurisdiction for the purpose of avoiding examination. 285 U.S. at 207. Section 9(b)

authorized a court, in certain circumstances, to order a debtor detained (though not imprisoned) for a limited period of time for the purpose of examination. *Ibid.* Section 9(b) did not authorize the use of a writ of ne exeat, and the creditor who sought the writ in *D. Ginsberg & Sons* had not complied with the specific requirements of Section 9(b). See *In re Foster Constr. Corp.*, 50 F.2d 693, 694 (2d Cir. 1931), aff'd, *D. Ginsberg & Sons*, 285 U.S. 204. This Court held that Section 2(15) did not "grant[] additional authority in respect of arrest of bankrupts" on the verge of fleeing the jurisdiction, over and above the powers provided in Section 9(b). *D. Ginsberg & Sons*, 285 U.S. at 208.[2]

The Court's decision in *D. Ginsberg & Sons* thus turned on the presence of statutory provisions that specifically addressed the detention of debtors who sought (or were viewed as likely to seek) to leave the jurisdiction in order to avoid examination. The Court's reasoning might be applicable to this case if the Bankruptcy Code expressly prohibited, or established specific preconditions to, a bankruptcy court's imposition of an equitable surcharge on a debtor whose bad-faith conduct during the bankruptcy proceedings resulted in increased administrative expenses. Because the Code includes no such specific provision, however, the equitable authority codified in Section 105(a) authorizes bankruptcy courts to take nec-

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[2] The Court also reasoned that, even if Section 2(15) generally authorized bankruptcy courts to allow writs of ne exeat, the writ issued in *D. Ginsberg & Sons* was impermissible. 285 U.S. at 209. The Court concluded that, because the bankruptcy laws did not allow arrest of a bankrupt, Section 2(15) would not permit the arrest of an officer of a bankrupt corporation. *Ibid.*

essary and appropriate steps to deal with that form of debtor misconduct.

ii. More generally, the existence of statutory exceptions does not impliedly preclude a bankruptcy court from invoking general equitable powers based on case-specific findings of bad-faith and vexatious litigation conduct. A bankruptcy court may not use its authority under Section 105(a) to contravene explicit provisions of the Code by substituting its own policy judgments for those of Congress. Contrary to petitioner's assertion (Br. 22), however, the bankruptcy court did not do that in this case.

In *United States* v. *Noland*, 517 U.S. 535 (1996), this Court explained that a bankruptcy court may not use its equitable authority (there, the power of equitable subordination codified in 11 U.S.C. 510(c)) to subordinate claims "on a categorical basis in derogation of Congress's scheme of priorities." 517 U.S. at 536. Although the Court in *Noland* held that the bankruptcy court had erred by supplanting Congress's policy judgments about the ordering of priorities in bankruptcy, the Court recognized that Section 510(c)'s codification of courts' equitable subordination power "permits a court to make exceptions to a general rule when justified by particular facts." *Id.* at 540. The Court explained that, so long as a bankruptcy court respects "the relative levels of generality at which trial courts and legislatures respectively function in the normal course," *ibid.*, the court may use its equitable authority when a case-specific finding of creditor misconduct justifies a departure from the usual priority rules. *Id.* at 538-543.

The bankruptcy court in this case did not equitably surcharge petitioner's otherwise-exempt property in

order to effectuate a policy judgment different from Congress's. In particular, the court did not suggest that the payment of administrative expenses should *generally* take precedence over the debtor's interest in retaining exempt property. Rather, the court's exercise of equitable authority was premised on case-specific factual findings concerning petitioner's concealment of assets and vexatious litigation conduct, and on the further case-specific determination that petitioner's misconduct had vastly increased the administrative expenses borne by respondent. Although petitioner and his amici rely on a string of cases to support their argument that the inclusion of specific statutory exceptions necessarily precludes a court's use of other equitable exceptions, none of those cases involved a party who had engaged in bad-faith litigation conduct. See *Hillman* v. *Maretta*, 133 S. Ct. 1943, 1953 (2013); *United Student Aid Funds, Inc.* v. *Espinosa*, 559 U.S. 260, 278-279 (2010); *Noland*, 517 U.S. at 539-543; *Taylor* v. *Freeland & Kronz*, 503 U.S. 638, 644 (1992); *Guidry* v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 376 (1990); *Norwest Bank Worthington*, 485 U.S. at 206-207; *Butner* v. *United States*, 440 U.S. 48, 52-58 (1979).

iii. This Court has long held that a litigant's bad-faith or vexatious conduct in judicial proceedings can justify an equitable sanction that a court could not otherwise impose. The issue has arisen most frequently with respect to the award of attorney's fees. "In the United States, the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser." *Alyeska Pipeline Serv. Co.*, 421 U.S. at 247. Congress may provide exceptions to that "American Rule," and it has done so for specific cate-

gories of cases. *Id.* at 254-255. In most cases, however, the costs that may be taxed against the losing party are limited to those specified in 28 U.S.C. 1920 and 1923, which do not include compensation for an attorney's time.

Even in contexts where no express statutory authority to award fees applies, however, the Court has long and repeatedly recognized an exception to the American Rule "when the losing party has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons.'" *Alyeska Pipeline Serv. Co.*, 421 U.S. at 258-259 (quoting *F.D. Rich Co.* v. *United States*, 417 U.S. 116, 129 (1974)). A court's power to impose an award of attorney's fees as a sanction for bad-faith or fraudulent conduct stems from its inherent authority. *Id.* at 259; see *Roadway Express, Inc.*, 447 U.S. at 766; *Universal Oil Prods. Co.* v. *Root Ref. Co.*, 328 U.S. 575, 580 (1946). Thus, "if a court finds 'that fraud has been practiced upon it, or that the very temple of justice has been defiled,' it may assess attorney's fees against the responsible party, as it may when a party 'shows bad faith by delaying or disrupting the litigation or by hampering the enforcement of a court order.'" *Chambers*, 501 U.S. at 46 (quoting *Universal Oil Prods. Co.*, 328 U.S. at 580; *Hutto* v. *Finney*, 437 U.S. 678, 689 n.14 (1978)).

As in *Chambers*, the bankruptcy court's authority to sanction bad-faith conduct in this case was not limited by "the sanctioning scheme of the statute and the rules" governing exempt property in bankruptcy, which "taken alone or together, are not substitutes for the inherent power [of courts], for that power is both broader and narrower than other means of imposing sanctions." 501 U.S. at 46. A court's "inherent power

extends to a full range of litigation abuses" and "must continue to exist to fill in the interstices." *Ibid.*; see *id.* at 60 (Scalia, J., dissenting) (agreeing that a court may rely on its inherent authority to sanction bad-faith conduct that is related to the court's proceedings).

2. The availability of other sanctions in the Code did not preclude the court's use of an equitable surcharge here

Petitioner also relies (Br. 29-35, 39-42) on certain Bankruptcy Code provisions that are specifically designed to punish debtor misconduct. Contrary to petitioner's contention, those provisions do not preclude resort to other sanctions not enumerated in the Code.

Petitioner and his amici rely (Pet. Br. 29-32) on 11 U.S.C. 522(q), which caps the value of a debtor's homestead exemption if the debtor has engaged in certain forms of fraud or other serious conduct. Although petitioner asserts that Section 522(q) is "[o]f greatest relevance here," Br. 29, that provision does not apply to this case. Congress added Section 522(q) to the Code in 2005—after petitioner's bankruptcy petition was filed—and made the provision applicable only to cases commenced after its enactment. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, §§ 322, 1501(b)(2), 119 Stat. 97, 216. Section 522(q) therefore has no bearing on this case.

In any event, Section 522(q) establishes a *cap* on a fraudulent debtor's homestead exemption; it does not guarantee that such a debtor will receive that amount (or the maximum allowed by state law if lower) in all cases. The statutory cap in Section 522(q), moreover,

is nearly twice the value of the homestead exemption provided to Chapter 7 debtors (like petitioner) in California. 11 U.S.C. 522(q). That incongruity reinforces the conclusion that a bankruptcy court may invoke its equitable authority to "fill in the interstices" in exceptional circumstances. *Chambers*, 501 U.S. at 46.

Petitioner also argues (Br. 32-35, 39-41) that a bankruptcy court's statutory authority to dismiss a debtor's case or to deny a debtor's discharge precludes imposition of the equitable sanction in this case. Nothing in the text or structure of the relevant statutory provisions indicates a congressional intent that those sanctions serve as the exclusive means of sanctioning a debtor's bad-faith litigation conduct. To the contrary, Congress's explicit authorization of "*any* action * * * necessary or appropriate * * * to prevent an abuse of process," 11 U.S.C. 105(a) (emphasis added), indicates that other provisions of the Code are not the exclusive means of achieving that objective.

Even if Section 105(a) did not exist, moreover, a federal court is not "forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under statute or the Rules." *Chambers*, 501 U.S. at 50. "[I]f in the informed discretion of the court, neither the statute nor the Rules [is] up to the task, the court may safely rely on its inherent power." *Ibid.* This is just such a case. None of the alternative sanctions petitioner identifies would have provided an effective remedy for his egregious conduct. A dismissal of petitioner's case would have offered him "an 'escape hatch' from the charges of bad faith." *In re Jacobsen*,

609 F.3d 647, 654 (5th Cir. 2010). And while petitioner was denied a discharge, that ruling had little practical effect because petitioner's major creditors were all paid in full after his fraud was uncovered and his house sold.

Neither dismissal nor discharge, moreover, would have redressed the harm that petitioner inflicted on respondent while the case was pending. And neither remedy would sufficiently deter vexatious litigation conduct. If no effective sanction were available, a debtor in petitioner's position would have nothing to lose, and potentially much to gain, by obstructing a trustee's investigation into his finances and subjecting the trustee to onerous litigation expenses. That is not what Congress intended. Section 105(a) and courts' inherent authority are necessary backstops for maintaining an orderly and efficient federal bankruptcy system.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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OCTOBER 2013

AMICUS CURIAE BRIEF

No. 12-5196

In The

Supreme Court of the United States

STEPHEN LAW, PETITIONER,

v.

ALFRED SIEGEL, TRUSTEE.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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BRIEF FOR BANKRUPTCY LAW SCHOLARS AS AMICI CURIAE SUPPORTING PETITIONER

The bankruptcy law scholars listed below respectfully submit this brief as amici curiae in support of petitioner.[1]

INTEREST OF AMICI CURIAE

Amici curiae are all professors and scholars of bankruptcy law from law schools throughout the Nation. Amici are not affiliated with any parties in this case. Rather, amici's interest is in the development of bankruptcy law and the sound administration of the bankruptcy system.

Amici curiae are as follows:

Daniel A. Austin, Associate Professor, Northeastern University School of Law;

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[1] Letters from the parties consenting to the filing of this brief are being filed with the Clerk of the Court, pursuant to Rule 37.3(a). No counsel for a party authored this brief in whole or in part and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of the brief. No person other than amici curiae, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

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INTRODUCTION AND SUMMARY OF ARGUMENT

Section 105 of the Bankruptcy Code is a general grant of equitable power, permitting bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. 11 U.S.C. § 105(a). But by its express terms, Section 105 is not a font of unlimited power to do whatever the bankruptcy court deems fair and equitable. Rather, its grant is limited to the power "to carry out" other provisions of the Bankruptcy Code.

Those other provisions specifically address the issue here—whether and when a debtor's exempt property may be surcharged because of the debtor's misconduct. In Section 522 of the Bankruptcy Code, Congress enacted a carefully drawn scheme in which it laid out in arduous detail exactly which property a debtor may claim as exempt, precisely what limitations may be imposed on those exemptions, and even what exceptions may be made to those limitations. None of Section 522's provisions indicates that exempt property may be limited through a surcharge.

To the contrary, Section 522(c) provides categorically that exempt property cannot be used to satisfy creditors' claims against the debtor. 11 U.S.C. § 522(c). And Section 522(k) provides that exempt property "is not liable for payment of any administrative expense." *Id.* § 522(k). Congress created certain narrow exceptions to the absolute prohibition on the

use of exempt property, none of which is implicated here.

Congress also enacted specific statutory provisions concerning the penalties and remedies that may be imposed for debtor misconduct. For example, fraudulently shielding property from the estate gives rise to denial of a discharge of the debtor's debts and may expose the debtor to criminal penalties. None of the specific punitive or remedial statutes enacted by Congress provides for a surcharge of the debtor's exempt property.

This Court repeatedly has held that specific statutory provisions govern general ones. Congress already turned its attention to the issues at hand and made specific policy choices. Section 105's general grant of equitable authority should not be read to allow circumvention of those specific provisions.

Rather, Section 105 is correctly understood as a method for enforcing substantive rights found in other provisions of the Bankruptcy Code. For example, the Bankruptcy Code requires debtors and non-debtors alike to turn over estate property to the trustee upon the commencement of the bankruptcy case. Section 105 authorizes the issuance of an injunctive order compelling compliance with the turnover provisions.

The key takeaway of this and other proper uses of the bankruptcy court's equitable powers is that they further, rather than contravene, other Code provisions. That is not true of a surcharge of the debtor's

exempt property. The Bankruptcy Code places exempt property off limits, with only particular exceptions, but a surcharge allows exempt property to be reached even where those exceptions do not apply. Whether such a surcharge should be allowed to punish or compensate for debtor misconduct should be left to Congress, not to case-by-case assessments by individual bankruptcy courts under Section 105.

ARGUMENT

A. Section 105 Cannot Be Used To Circumvent The Code Provisions Specifically Addressing Exemptions And Debtor Misconduct

1. The power granted under Section 105 is limited expressly to carrying out other provisions of the Bankruptcy Code

As this Court has cautioned, "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988). The starting point for interpreting Section 105 therefore is with the language of the statute itself. *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989).

While Section 105(a) grants bankruptcy courts equitable authority, that grant of power expressly is limited. 11 U.S.C. § 105(a). By its terms, Section 105(a) grants bankruptcy courts the authority to "issue any order, process, or judgment that is *necessary or appropriate to carry out the provisions of this title*," i.e., the Bankruptcy Code. *Ibid.* (emphasis added).

That express limitation tethers the scope of Section 105's equitable authority to other provisions of the Bankruptcy Code.

Thus, by its plain terms, "section 105(a) does not provide bankruptcy courts with a roving writ, much less a free hand." *Jamo v. Katahdin Fed. Credit Union* (*In re Jamo*), 283 F.3d 392, 403 (1st Cir. 2002). Instead, "[t]he authority bestowed thereunder may be invoked only if, and to the extent that, the equitable remedy dispensed by the court is necessary to preserve an identifiable right conferred elsewhere in the Bankruptcy Code." *Ibid.* Put another way, Section 105(a) "does not authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity." *United States v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986) (footnote omitted).

Moreover, given its express tether to the rest of the Code, Section 105 cannot be read in isolation. It must be construed in light of "the remainder of the statutory scheme." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). Indeed, that would be true even in the absence of such an express limitation. As this Court has observed in the context of the Bankruptcy Code, "[s]tatutory construction * * * is a holistic endeavor." *Ibid.*

As explained below, other provisions of the Code reflect Congress's creation of a specific, comprehensive scheme that would be undermined were Section

105(a) construed to grant bankruptcy courts authority to create their own ad hoc limitations on exempt property.

2. *Congress comprehensively detailed when exemptions may be limited in Section 522*

a. In Section 522 of the Bankruptcy Code, Congress established a carefully structured scheme concerning the exemptions a debtor may claim and the specific limitations that may be placed on those exemptions. 11 U.S.C. § 522. These enumerated limitations do not include a surcharge for misappropriation (or, as in this case, attempted misappropriation) of non-exempt property of the estate.

Section 522 sets forth specific provisions governing which property may be claimed as exempt. *Id.* § 522(b)-(j). In particular, property is exempt under Section 522(b)(3) to the extent it is exempt under state or federal nonbankruptcy law. *Id.* § 522(b)(1), (3). Alternatively, in States that have not opted out of the federal exemptions, the debtor may choose to apply the federal exemption scheme. *Id.* § 522(b)(1)-(2), (d). For example, the federal exemption allows the debtor to exempt, inter alia, up to $22,975 for the debtor's homestead and up to $3,675 for a motor vehicle. *Id.* § 522(d)(1), (2).

Through a multitude of particular, carefully chosen provisions, Congress also specified the exact circumstances in which the exemptions may be limited. 11 U.S.C. § 522(g)(1)(B), (n)-(q). Many of these provisions deal with extremely specific and varying

instances of debtor misconduct, and they detail precisely how the exemption may be limited for each type of misconduct.

For example, Congress specifically addressed when and to what extent a bankruptcy court can limit the homestead exemption, the exemption at issue here. Section 522 imposes a $155,675 cap on the amount of the homestead exemption if "the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title." *Id.* § 522(q)(1)(A). The $155,675 cap also applies if "the debtor owes a debt arising from" (1) "any violation" of federal or state securities laws, (2) "fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security," (3) "any civil remedy under section 1964 of title 18," which pertains to the Racketeer Influenced and Corrupt Organizations Act, or (4) "any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years." *Id.* § 522(q)(1)(B).

But the Code does not just set forth these limitations on the homestead exemption. It also specifies a circumstance in which these limitations do not apply: the cap "shall not apply to the extent the amount of an interest" in a homestead "is reasonably necessary for the support of the debtor and any dependent of the debtor." *Id.* § 522(q)(2). Thus, even if a debtor has been convicted of a felony under circumstances

that "demonstrate[ ] that the filing of the case was an abuse of the provisions" of the Bankruptcy Code, *id.* § 522(q)(1)(A), the debtor can claim his entire homestead exemption to the extent "reasonably necessary for the support" of himself or any dependent, *id.* § 522(q)(2).

b. These detailed provisions strongly suggest that Congress did not give bankruptcy courts authority to substitute their own conception of equity for Congress's specific policy choices. If Section 105(a) were read to allow bankruptcy courts to create exceptions beyond the express provisions of Section 522, that would not be "carry[ing] out" the provisions of the Code. 11 U.S.C. § 105(a). It would be contravening them.

Indeed, that occurred here. The bankruptcy court permitted the trustee to surcharge exempt property to recover administrative expenses the trustee incurred because the debtor attempted to misappropriate non-exempt assets. Pet. App. 7, 13. But Section 522(k) already speaks to that situation. It provides that, except in two specific instances, "[p]roperty that the debtor exempts under this section is *not* liable for payment of any administrative expense." 11 U.S.C. § 522(k) (emphasis added).

Section 522 likewise speaks directly to the use of exempt property to compensate for the debtor's failure to turn over or fully account for non-exempt property. Section 522(c) provides that, except for certain particular exceptions, "property exempted under

this section is *not* liable during or after the case for any debt of the debtor that arose * * * before the commencement of the case." *Id.* § 522(c) (emphasis added). In addition, where the trustee recovers property for the estate, Section 522(g) governs whether an exemption may cover the recovered property. That section provides that a debtor may exempt property recovered by the trustee only if "the debtor did not conceal such property." *Id.* § 522(g)(1)(B).

Section 522 also details when and how exemptions must be claimed and disputed. Section 522(*l*) requires the debtor to "file a list of property that the debtor claims as exempt." *Id.* § 522(*l*). Once the debtor's list is filed, interested parties have 30 days to object to the list of claimed exemptions. Fed. R. Bankr. P. 4003(b)(1). Section 522(*l*) sets forth an absolute rule that "[u]nless a party in interest objects, the property claimed as exempt on such list *is exempt*." 11 U.S.C. § 522(*l*) (emphasis added). This Court has construed Section 522(*l*) strictly, concluding that courts have "no authority" to allow an objection to a claimed exemption after the 30-day period. *Taylor v. Freeland & Kronz*, 503 U.S. 638, 643-645 (1992). That is so even if the exemption was claimed in bad faith. *Ibid.* These strict requirements would be undermined if bankruptcy courts could use Section 105(a) to allow a surcharge against exemptions that were not timely challenged.

Moreover, allowing the trustee to surcharge the debtor's exemptions would contravene Section 522 in yet another way. Section 522(c) specifies a number of

exceptions for the claims of particular creditors that *can* be enforced against the debtor's exempt property. These include nondischargeable domestic support obligations, nondischargeable tax debts, valid lien claims, debts for fraud in connection with student loans and scholarships, and nondischargeable fiduciary defalcation or willful and malicious injury debts owed to a federal regulatory agency liquidating a bank. *See* 11 U.S.C. § 522(c)(1)-(4). By specifying particular nondischargeable debts that *are* enforceable against the debtor's exempt property, Section 522(c) gives these creditors a privileged repayment right relative to all other pre-bankruptcy creditors.

An exemption surcharge, however, would abrogate these creditors' repayment privilege, by allowing all other pre-bankruptcy creditors recourse against the debtor's exempt assets through the trustee's exemption surcharge. Indeed, it actually would subordinate these creditors' right to repayment, "leav[ing] § 522(c) creditors to look to the remains [of] the debtor's exempt assets after the trustee has satisfied his surcharge." *In re Scrivner*, 370 B.R. 346, 355 n.1 (B.A.P. 10th Cir. 2007) (Clark, Bankr. J., dissenting), *rev'd*, 535 F.3d 1258 (10th Cir. 2008). Such an exemption thus would "defeat the statutory treatment of § 522(c) creditors by reducing § 522(c) creditors to a second priority behind the trustee's surcharge." *Ibid.*

3. *Congress specifically addressed penalties for bankruptcy misconduct and remedies for recovering property of the estate*

Not only did Congress expressly address exceptions for exempt property, it also specifically provided penalties for wrongful conduct, including attempting to misappropriate non-exempt property. The enumeration of these penalties suggests Congress itself has determined the consequences for such behavior.

First and foremost, such conduct provides grounds for disallowing the debtor a discharge. Section 727(a) of the Bankruptcy Code provides for denial of discharge where, inter alia, the debtor "has transferred, removed, destroyed, mutilated, or concealed" property "with intent to hinder, delay, or defraud a creditor or an officer of the estate"; where "the debtor knowingly and fraudulently, in or in connection with the case * * * made a false oath or account" or "presented or used a false claim"; or where "the debtor has refused, in the case * * * to obey any lawful order of the court." 11 U.S.C. § 727(a)(2), (4), (6).

Moreover, such conduct may give rise to criminal penalties. It is a federal crime to commit fraud in bankruptcy cases, including "knowingly and fraudulently conceal[ing] from" the trustee "any property belonging to the estate of a debtor," or "mak[ing] a false or fraudulent representation [or] claim" in connection with a bankruptcy case "for the purpose of executing" or "attempting" to execute "a scheme or artifice to defraud." 18 U.S.C. §§ 152, 157.

Additionally, Rule 1008 of the Federal Rules of Bankruptcy Procedure requires petitions, lists, and schedules to "be verified or contain an unsworn declaration" of truthfulness under penalty of perjury, which is a criminal offense. Fed. R. Bankr. P. 1008; *see* 28 U.S.C. § 1746; *see also* Fed. R. Bankr. P. 9011(c) (providing for sanctions for misrepresentations in bankruptcy court filings).

The Bankruptcy Code also provides remedies for the trustee to restore to the estate misappropriated property, for the payment of both creditors' claims and the estate's administrative expenses. Through the Code's express turnover, avoidance, and recovery provisions, the trustee can recover property of the estate from the debtor or others in possession of property of the estate or to whom property of the estate has been transferred. 11 U.S.C. §§ 542, 549, 550. The trustee is entitled to recover the property itself, or the bankruptcy court may enter a money judgment for "the value of such property." *Id.* §§ 542(a), 550(a). Such a money judgment may properly issue against a debtor who has misappropriated property of the estate, and the debtor's post-bankruptcy income and assets could be used to satisfy the judgment. *See* 11 U.S.C. § 727(a)(2), (5), (b); Fed. R. Civ. P. 64(a); Fed. R. Bankr. P. 7064, 9014(c). The debtor's exempt property, however, is not available to satisfy such a judgment. *See* 11 U.S.C. § 522(c), (k).

4. Section 105's general grant of authority cannot be used to circumvent the Code's specific provisions

These detailed and carefully tailored provisions concerning exemptions and debtor misconduct cannot be circumvented by resort to the general provisions of Section 105(a).

a. This Court repeatedly has held that in construing a statute, "'the specific governs the general.'" *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012) (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992)). "That is particularly true where," as here, "'Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions.'" *Ibid.* (quoting *Varity Corp. v. Howe*, 516 U.S. 489, 519 (1996) (Thomas, J., dissenting)).

Where Congress has turned its attention to a specific situation, and provided a carefully drawn provision to address it, a party cannot evade that specific provision by resorting to a more general one, especially one with fewer restrictions. *See, e.g.*, *Hinck v. United States*, 550 U.S. 501, 506 (2007) (quoting *EC Term of Years Trust v. United States*, 550 U.S. 429, 433 (2007)). This is true "[h]owever inclusive may be the general language of a statute." *Fourco Glass Co. v. Transmirra Prods. Corp.*, 353 U.S. 222, 228 (1957). The general provision "'will not be held to apply to a matter specifically dealt with in another part of the same enactment.'" *Ibid.* (quoting *D. Ginsberg &*

Sons, Inc. v. Popkin, 285 U.S. 204, 208 (1932)). Rather, "[t]he terms of the specific authorization must be complied with." *RadLAX Gateway Hotel*, 132 S. Ct. at 2071.

Thus, in *D. Ginsberg & Sons*, this Court concluded that a general grant of authority worded similarly to Section 105 did not apply. There, the Bankruptcy Act provision at issue granted bankruptcy courts the power to "make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title." *D. Ginsberg & Sons*, 285 U.S. at 206. Other provisions of the Bankruptcy Act, however, specifically established a "general exemption of bankrupts from arrest," providing only a "carefully guarded exception * * * as to those about to leave the district to avoid examination." *Id.* at 207-208. This Court held that those "[s]pecific terms prevail." *Id.* at 208. It thus rejected the "contention that the general language * * * grants additional authority in respect of arrests of bankrupts." *Ibid.*

b. As in *D. Ginsberg & Sons*, other statutory provisions here explicitly address whether and to what extent exemptions may be limited, as well as the penalties that a bankruptcy court may order for debtor misconduct. Surcharging an exemption for misconduct is not among the specific limitations on exemptions that Congress decided to enact. "Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to

be implied, in the absence of evidence of a contrary legislative intent." *TRW Inc. v. Andrews*, 534 U.S. 19, 28 (2001). Thus, "[h]owever inclusive" the general language of Section 105 may be, it cannot be read to permit a surcharge of exempt property. *Fourco Glass Co.*, 353 U.S. at 228.

Indeed, there is evidence that Congress meant for Section 522's explicit limitations on exemptions to be the only ones. The 1973 Commission on the Bankruptcy Laws of the United States proposed the original version of what ultimately became Section 522(c). In explaining this provision, the Commission stated that "[t]he right to use the exemption is unqualified; it does not depend on whether the debtor receives a discharge and is not forfeited by 'bad conduct' of the debtor." Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, pt. II, at 128 (1973) (proposed § 4-503 note 2). Indeed, that is the very nature and purpose of debtor exemptions, to place certain property beyond the reach of judgment creditors.

c. That Section 105(a) is not a free-ranging grant of authority to do equity is bolstered by this Court's decision outside the bankruptcy context in *Guidry v. Sheet Metal Workers National Pension Fund*, 493 U.S. 365 (1990). There, the Court held that courts could not impose an equitable remedy for an individual's misconduct by relying on a general grant of authority, where that remedy contravened a particular statutory scheme. *Id.* at 374-377.

The petitioner in *Guidry*—the head of a local union chapter and trustee of the chapter's pension fund—was convicted of embezzlement from the union in violation of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"). *Id.* at 367-368. The pension plans then refused to pay the petitioner his benefits, and the petitioner sued. *Id.* at 368. The union intervened and brought claims against the petitioner, which resulted in a money judgment in the union's favor. *Ibid.* The district court imposed a constructive trust, ordering that the petitioner's benefits be paid to the union rather than to the petitioner, until the union's judgment was satisfied. *Id.* at 369-370.

In imposing the constructive trust, the district court relied on the general remedial provisions of the LMRDA, which allowed the court to order "'appropriate relief for the benefit of the labor organization.'" *Id.* at 374 (quoting 29 U.S.C. § 501(b)). But a specific provision of the Employee Retirement Income Security Act of 1974 ("ERISA") addressed whether pension benefits could be assigned to another entity, such as the union. *Id.* at 376. That specific statute mandated that "benefits provided under the plan may not be assigned or alienated." *Id.* at 367 n.1 (quoting 29 U.S.C. § 1056(d)(1)).

Invoking the canon that a specific statutory provision controls over a general one, this Court rejected the use of the general LMRDA provision to impose a constructive trust. *Id.* at 375-376. The Court explained: "We do not believe that congressional

intent would be effectuated by reading the LMRDA's general reference to 'other appropriate relief' as overriding an express, specific congressional directive that pension benefits not be subject to assignment or alienation." *Id.* at 376.

The Court also concluded that it would not be "appropriate to approve any generalized equitable exception—either for employee malfeasance or for criminal misconduct—to ERISA's prohibition." *Ibid.* That is because the specific ERISA provision "reflects a considered congressional policy choice, a decision to safeguard a stream of income for pensioners (and their dependents, who may be, and perhaps usually are, blameless), even if that decision prevents others from securing relief for the wrongs done them." *Ibid.* "If exceptions to this policy are to be made, it is for Congress to undertake that task." *Ibid.*

The Court explained that allowing a general equitable exception to circumvent a specific congressional policy choice "would be especially problematic in the context of an antigarnishment provision." *Ibid.* The very purpose of such a provision is "to hinder the collection of a lawful debt," and by definition it reflects a decision that "certain broad social policies sometimes take[] precedence over the desire to do equity between particular parties." *Ibid.* If any exception to that policy choice is to be created, it "should be left to Congress." *Id.* at 377.

The rationale of *Guidry* applies fully here. Like the statutory exemption here, the ERISA anti-alienation

provision at issue in *Guidry* is essentially a means of exempting property from the claims of creditors. The provision "prohibits the garnishment of pension benefits as a means of collecting a judgment." *Id.* at 369; *see* 11 U.S.C. § 541(c)(2) (providing that a "restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable" in the debtor's bankruptcy case); *Patterson v. Shumate*, 504 U.S. 753 (1992) (relying upon *Guidry* and holding that a debtor's ERISA-qualified pension benefits are excluded from the debtor's bankruptcy estate under Section 541(c)(2) by virtue of ERISA's anti-alienation provision).

As it did with ERISA's anti-alienation provision, Congress made a considered policy choice to make exempt property categorically unavailable to satisfy creditors' claims against the debtor or a trustee's administrative expenses. 11 U.S.C. § 522(c), (k). With only narrow exceptions inapplicable here, Congress decided that exempt property "is not liable." *Ibid.* Thus, as in *Guidry*, exempt property cannot be reached by creditors, even if the debtor has engaged in certain malfeasance.

Although that choice might seem in particular cases to cause inequitable results, it was Congress's choice to make. Bankruptcy courts' equitable powers under Section 105(a) may not be exercised "at the level of policy choice at which Congress itself operated in drafting the Code." *United States v. Noland*, 517 U.S. 535, 543 (1996). If any exception is to be

created, "it should be left to Congress." *Guidry*, 493 U.S. at 377.

B. A Correct Construction Of Section 105 Preserves A Bankruptcy Court's General Equitable Powers To Carry Out Other Bankruptcy Code Provisions

Properly confining Section 105 to preclude surcharges against exempt property due to debtor misconduct does not render Section 105 a dead letter, by any means. Its grant of equitable authority is still quite potent in many respects. But in each instance involving Section 105's correct use, Section 105 simply provides the procedural means for enforcing substantive rights that the Bankruptcy Code itself already affords. That is, as its text expressly provides, Section 105 authorizes orders that are "necessary or appropriate to carry out the provisions of" the Bankruptcy Code. 11 U.S.C. § 105(a).

For example, Section 105 gives bankruptcy courts the power to enforce the statutory obligation to turn over all of the debtor's property to the trustee. Under Section 521 of the Bankruptcy Code, the debtor is required to "surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate." 11 U.S.C. § 521(a)(4). Section 542(a) imposes a similar obligation on any entity (including the debtor) "in possession, custody, or control" of property of the estate to "deliver to the trustee, and account for, such property

or the value of such property." *Id.* § 542(a). Nowhere does the Bankruptcy Code, however, specifically authorize the bankruptcy court to issue an order directing turnover of property of the estate or sanctioning noncompliance with such a turnover order.

Section 105 is the general grant of authority to issue the turnover order, and Sections 521 and 542 are the statutory provisions appropriately enforced thereby. *See* Ralph Brubaker, *Turnover, Adequate Protection, and the Automatic Stay (Part I): Origins and Evolution of the Turnover Power*, 33 Bankr. L. Letter No. 8, at 4-5 (Aug. 2013). Where an entity refuses to comply with its turnover obligations, an injunctive order compelling a turnover is necessary and appropriate "to carry out" Sections 521(4) and 542(a). *See Maggio v. Zeitz*, 333 U.S. 56, 62-63 (1948) (turnover order under Section 105's predecessor statute "has been sustained as an appropriate and necessary step in enforcing the Bankruptcy Act"). Such use of the Section 105(a) power thus furthers, rather than contravenes, other Code provisions.

Similarly, orders are appropriate under Section 105 to preserve property within the bankruptcy court's jurisdiction. The bankruptcy court has "exclusive jurisdiction of all the property, wherever located, of the debtor as of the commencement of [the] case, and of property of the estate." 28 U.S.C. § 1334(e); *see id.* § 157. It has long been understood that bankruptcy courts have the equitable power to issue orders to prevent dissipation of the bankruptcy estate's property or to preserve the bankruptcy

court's jurisdiction over such property. *See Continental Ill. Nat'l Bank & Trust Co. v. Chicago, Rock Island & Pac. Ry. Co.*, 294 U.S. 648 (1935); *Steelman v. All Continent Corp.*, 301 U.S. 278 (1937).

Indeed, one of the most widely accepted uses of Section 105 is to enjoin actions that are not stayed by the Bankruptcy Code's automatic-stay provision, Section 362(a). Under Section 362(a), the filing of a bankruptcy petition automatically stays any action against the debtor or any act to obtain possession of property of the estate. 11 U.S.C. § 362(a). But other actions might not be automatically stayed and yet still adversely affect administration of the debtor's bankruptcy case. Congress specifically contemplated that bankruptcy courts would issue Section 105 injunctions "to stay actions not covered by the automatic stay," with the courts determining "on a case-by-case basis whether a particular action which may be harming the estate should be stayed." S. Rep. No. 95-989, at 51 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5837; *see* H.R. Rep. No. 95-595, at 341-342 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6298. Through Section 105, Congress thus gave bankruptcy courts the authority to issue injunctions under traditional equitable principles. Such injunctive orders may be necessary to prevent interference with appropriate administration of the debtor's bankruptcy case. *See* Collier on Bankruptcy ¶ 105.04 (16th ed. 2013) (citing, inter alia, *Celotex Corp. v. Edwards*, 514 U.S. 300 (1995)).

Even where the automatic stay does apply, bankruptcy courts may issue injunctions under Section 105 to enforce it. That may be necessary if, for example, there is a dispute as to whether the automatic stay applies to a particular action. *See, e.g.*, *FDIC v. Hirsch* (*In re Colonial Realty Co.*), 980 F.2d 125 (2d Cir. 1992). Such an order specifically enjoining the action at issue is necessary "to carry out" Section 362.

And Section 105 may come into play if a party refuses to comply with the bankruptcy court's turnover order or stay order. Such a party may be held in civil contempt, and Section 105(a) is widely considered a statutory source of the bankruptcy court's civil contempt power. *Cox v. Zale Delaware, Inc.*, 239 F.3d 910, 916-917 (7th Cir. 2001); *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 423 n.1 (6th Cir. 2000); *Bessette v. Avco Fin. Servs., Inc.*, 230 F.3d 439, 446 (1st Cir. 2000). And that civil contempt power is also the means by which bankruptcy courts enforce both of the Bankruptcy Code's automatic statutory injunctions—the Section 362 stay that arises upon commencement of a bankruptcy case, and the Section 524 discharge injunction that permanently enjoins collection of discharged debts. 11 U.S.C. §§ 362(a), 524(a)(2); *see* Collier on Bankruptcy ¶¶ 362.12[2], 524.02[2][c].

As another example, Section 105 also may be a source of power for bankruptcy courts to appoint estate representatives, such as a Chapter 11 creditors committee, to pursue a derivative avoidance action on

behalf of the estate. Several provisions of the Bankruptcy Code give the trustee the power to avoid certain transfers or obligations of the debtor. 11 U.S.C. §§ 544-549. The avoidance sections of the Bankruptcy Code provide that the "trustee" has the authority to avoid, *e.g.*, *id.* § 544(a), but the "trustee" simply means "the representative of the estate," *id.* § 323(a). In Chapter 11 cases, the debtor-in-possession is the representative of the estate and serves the role of "trustee." In certain circumstances, however, the normal agents of the corporate debtor-in-possession (i.e., the board of directors) have a conflict of interest in determining whether the corporation will bring a particular cause of action—e.g., an action against directors. When such a conflict arises outside the bankruptcy context, corporate law recognizes that a shareholder may bring a derivative action on behalf of the corporation.

When such a conflict arises in a bankruptcy case in the context of an avoidance action, the bankruptcy court's equitable powers under Section 105 may permit the court to appoint another entity, such as a creditors committee, to act as estate representative to pursue the avoidance action. *See Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery* (*In re Cybergenics Corp.*), 330 F.3d 548, 567-569 (3d Cir. 2003) (en banc); Ralph Brubaker, *Creditor/Committee Derivative Litigation: Of Textualism And Equitable Powers*, 22 Bankr. L. Letter No. 11 (Nov. 2002). Such an order thus may be necessary or appropriate to carry out the statutory avoidance powers.

The point of each of these examples is two-fold. First, rejecting the Ninth Circuit's expansive reading of Section 105 will leave significant circumstances in which a bankruptcy court appropriately may exercise its Section 105 powers to carry out another Code provision. Second, use of Section 105 to surcharge a debtor's exempt property is different in kind from the type of equitable powers that bankruptcy courts have long exercised. Such an order contravenes Section 522. Section 105 has never been viewed as a tool to circumvent Congress's carefully adopted choices, and it should not be so viewed now.

CONCLUSION

For the reasons set forth above and in petitioner's brief, the Ninth Circuit's decision should be reversed.

Respectfully submitted,

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AMICUS CURIAE BRIEF

No. 12-5196

IN THE

Supreme Court of the United States

STEPHEN LAW,

Petitioner,

v.

ALFRED H. SIEGEL, CHAPTER 7 TRUSTEE

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF *AMICUS CURIAE* G. ERIC BRUNSTAD, JR. IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

The undersigned *amicus curiae* is an Adjunct Professor of Law at New York University School of Law and a frequent Visiting Lecturer in Law at the Yale Law School where he teaches courses on bankruptcy law, domestic and international business reorganizations, commercial transactions, secured transactions, federal courts, and argument and reason. He began teaching at Yale in 1990, began teaching at NYU in 2012, and has also taught at the Harvard Law School. In addition to his teaching, the undersigned is a contributing author of Collier on Bankruptcy, responsible for writing several chapters of the Treatise. He is also a partner at the law firm of Dechert LLP; a prior Chair of the ABA Business Bankruptcy Committee; a former member of the Judicial Conference Advisory Committee on the Federal Bankruptcy Rules; and a Fellow of the American College of Bankruptcy.

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[1] No counsel for any party has authored this brief in whole or in part, and no party or counsel for a party has made a monetary contribution to the preparation or submission of this brief. *See* Sup. Ct. R. 37.6. All parties have been timely notified of the undersigned's intent to file this brief; both petitioner and respondent have consented to the filing of this brief. Copies of petitioner's and respondent's consents are filed herewith.

The undersigned has briefed and argued numerous bankruptcy matters before the Court, including *Schwab v. Reilly*, 130 S. Ct. 2652 (2010); *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229 (2010); *Florida Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33 (2008); *Travelers Cas. & Sur. Co. v. Pacific Gas & Elec. Co.*, 549 U.S. 443 (2007); *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007); *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004); and *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000). He has otherwise participated as counsel for one of the parties in numerous other bankruptcy matters before the Court, including *Stern v. Marshall*, 131 S. Ct. 2594 (2011); *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010); *Central Virginia Cmty. College v. Katz*, 546 U.S. 356 (2006); *Rousey v. Jacoway*, 544 U.S. 320 (2005); *Kontrick v. Ryan*, 540 U.S. 443 (2004); *Lamie v. United States Trustee*, 540 U.S. 526 (2004); *FCC v. NextWave Personal Commc'ns Inc.*, 537 U.S. 293 (2003); and *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249 (1992). In addition, he has prepared and filed with the Court several amicus briefs in bankruptcy cases, including *Bullock v. Bank-Champaign, N.A.*, 133 S. Ct. 1754 (2013); *Rad-LAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065 (2012); *Hall v. United States*, 132 S. Ct. 1882 (2012); *Ransom v. FIA Card Servs.*, 131 S. Ct. 716 (2011); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010); *Howard*

Delivery Serv., Inc. v. Zurich American Ins. Co., 547 U.S. 651 (2006); *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440 (2004); *Archer v. Warner*, 538 U.S. 314 (2003); and *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124 (1995).

The undersigned is deeply interested in the subject of bankruptcy law and has written, taught, and lectured on the subject of bankruptcy exemptions and the equitable power of bankruptcy courts. The purpose of this brief is to address matters that bear on the Court's determination of an important bankruptcy issue: whether a bankruptcy court may, pursuant to the general equitable power conferred by section 105(a) of the Bankruptcy Code, 11 U.S.C. § 105(a), surcharge a debtor's statutorily exempt property. In particular, this brief explains that the power bestowed on bankruptcy courts by section 105(a) does not authorize the courts to create new equitable remedies that Congress has not prescribed—and certainly not where, as here, such would actually conflict with the text of the Code. In addition, this brief explains why this case is fundamentally different from *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007). The undersigned argues that the decision of the court below should be reversed and that property that is rightfully exempt under section 522 of the Bankruptcy Code, 11 U.S.C. § 522, should be deemed to belong to the debtor free and clear of all other claims, including a

trustee's claim for surcharge, except as expressly provided by statute.

STATEMENT

Petitioner filed for bankruptcy under Chapter 7 of the Bankruptcy Code on January 5, 2004. J.A. 56a. Respondent was appointed as the Chapter 7 trustee. *Id.* Petitioner's residence (the "Property") was the sole asset of the bankruptcy estate. *Id.* The schedules filed with the bankruptcy petition indicated that the Property was subject to two liens: a note and deed of trust in favor of Washington Mutual Bank in the amount of $147,156.52 and a note and deed of trust in favor of "Lin's Mortgage & Associates" in the amount of $156,929.04. J.A. 56a-57a. Petitioner claimed that the second deed of trust was security for a $168,000 loan he received from a woman named Lili Lin of China. J.A. 57a-58a. Petitioner claimed a $75,000 homestead exemption in the Property. J.A. 56a.

On January 9, 2006, Respondent filed a motion seeking to surcharge the entire $75,000 of Petitioner's homestead exemption due to Petitioner having "'engaged in exceptional circumstances of misconduct' by 'willfully and knowingly attempt[ing] to defraud his creditors by removing equity from the property.'" J.A. 138a. Respondent alleged that Petitioner "had lied about the existence and bona fides of the alleged

second mortgage on the Property held by the creditor known as Lili Lin." J.A. 57a. The bankruptcy court granted the surcharge on March 22, 2006, finding that Petitioner's conduct "has been the direct cause of ... at least the bulk of the expenses that have been incurred by [Respondent] in this case ...." J.A. 139a-140a. On December 29, 2006, the Bankruptcy Appellate Panel for the Ninth Circuit (the "BAP") reversed the surcharge order on the grounds that Petitioner was not attempting to abuse his exemptions, nor was Respondent seeking to remedy any such abuse. J.A. 150a. Rather, "the court was merely shifting litigation expenses to the [Petitioner] in a fashion designed to punish [Petitioner] for his litigation activity." J.A. 151a. The BAP noted, however, that it "express[ed] no opinion whether specific instances of mischief by [Petitioner] in the past might support further monetary sanctions in the future, including a surcharge against his exemption." *Id.* The Ninth Circuit affirmed. J.A. 59a.

On April 24, 2008, Respondent filed a second motion seeking to surcharge Petitioner's homestead exemption alleging that: (1) the second deed of trust on the Property was nonexistent and was fraudulently and intentionally fabricated by Petitioner "to falsely encumber the Property so as to discourage its sale as part of a scheme by [Petitioner] to defraud his creditors"; (2) Petitioner had perjured himself by listing the second deed in his schedules and by submitting a

fraudulent promissory note to the court; and (3) Petitioner had created a creditor, Lili Lin of China, who either did not exist or had no interest in the Property, in order to frustrate Respondent's administration of the estate. J.A. 61a. The bankruptcy court granted the surcharge, finding that, were it not for Petitioner's misrepresentations about the fictitious loan, "ample funds would have been available to pay [Petitioner's] creditors and [Respondent's] costs." J.A. 92a-93a. Reasoning that Respondent had incurred far more than $75,000 in attorneys' fees in responding to the disputed deed, the court granted a surcharge on Petitioner's entire homestead exemption. J.A. 93a. The BAP affirmed the surcharge order. J.A. 55a. While recognizing that "[t]he Bankruptcy Code does not expressly authorize surcharges against a debtor's exemptions," the BAP cited Ninth Circuit case law holding that "a bankruptcy court may equitably surcharge a debtor's statutory exemptions when reasonably necessary to protect the integrity of the bankruptcy process and to ensure that a debtor receives as exempt property an amount no more than what is permitted by the Bankruptcy Code." J.A. 68a (*citing Latman v. Burdette*, 366 F.3d 774, 786 (9th Cir. 2004)). The Ninth Circuit affirmed the BAP's decision on June 6, 2011. J.A. 51a-53a.

SUMMARY OF THE ARGUMENT

Pursuant to section 105(a) of the Bankruptcy Code, bankruptcy courts have the power to "tak[e] any action or mak[e] any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a). The extent of this power is subject to the restriction that it "must and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988). In light of this restriction, the plain language of the provisions of the Code governing the treatment of exempt property, and the important implications that exemptions have on a debtor's ability to make a "fresh start," section 105(a) cannot properly be interpreted as bestowing on the courts the power to surcharge a debtor's statutorily exempt assets under the circumstances here.

This Court recently applied section 105(a) in finding that a bankruptcy court had the power to deny a debtor's request to convert his Chapter 7 proceeding to one under Chapter 13 in *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007). *Marrama*, however, involved particular facts, concerns, and circumstances that are not present in this case. First, the debtor in *Marrama* sought to convert his bankruptcy proceeding specifically to deny his creditors access to certain property. Had the court lacked the au-

thority to deny the request, the court effectively would have been forced to grant the conversion, thus furthering the debtor's fraud *by its own order*. No similarly extraordinary circumstance is present here. In this case, Respondent seeks to invoke section 105(a) in order to recoup his own fees and costs—essentially converting section 105(a) into an unauthorized fee-shifting statute. Second, unlike the decision below, which relies entirely on Section 105(a) in awarding the court the power to surcharge the debtor's homestead exemption, the Court in *Marrama* found solid support for the power to deny the conversion in other sections of the Bankruptcy Code. In this case, surcharging the debtor's exempt property would affirmatively conflict with the text of the Code.

That *Marrama* should not be read to allow bankruptcy courts a broad power under section 105(a) to fashion new equitable remedies is made even more apparent in light of the Court's decisions establishing that the authority to create bankruptcy laws lies with Congress, and that the courts may not use their equitable powers to create new causes of action that Congress has declined to create. Even in cases in which a particular outcome is seemingly more beneficial to creditors and arguably more consistent with general principles of equity, courts may not invoke section 105(a) to make determinations that "run[] directly counter to Congress's policy judg-

ment." *United States v. Noland*, 517 U.S. 535, 541 (1996).

Furthermore, the plain language of section 522(l) makes clear that "[t]he debtor shall file a list of property that the debtor claims as exempt" and "[u]nless a party in interest objects, the property claimed as exempt on such list is exempt." 11 U.S.C. § 522(l). Where Congress desired to carve out exceptions to this general rule, it did so unambiguously. That Congress did not carve out an exception to allow a trustee to surcharge a debtor's homestead exemption where the debtor is alleged to have acted in bad faith indicates unequivocally that Congress did not intend for such an exception to exist. Nor does it make sense to allow the surcharge in light of the purpose behind the homestead exemption as a key component of a debtor's ability to emerge from bankruptcy and make a "fresh start." The decision below should be reversed.

ARGUMENT

A. This Court's Decision In *Marrama* Does Not Grant Bankruptcy Courts The Broad Equitable Power To Surcharge a Debtor's Exempt Property.

Section 105(a) of the Bankruptcy Code grants bankruptcy courts the power to "tak[e] any action or mak[e] any determination neces-

sary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a). At issue in the present case is whether the Ninth Circuit correctly held that section 105(a) vests bankruptcy courts with the power to surcharge property that is statutorily exempt from the bankruptcy estate on the theory that the debtor's bad faith conduct during the bankruptcy proceeding caused the trustee to incur unnecessary costs. *See* J.A. 51a-53a; *accord Malley v. Agin*, 693 F.3d 28 (1st Cir. 2012). *But see Scrivner v. Mashburn (In re Scrivner)*, 535 F.3d 1258, 1264 (10th Cir. 2008) (surcharge on exempt property pursuant to section 105(a) was improper because the "the Code contains explicit exceptions to the general rule placing exempt property beyond the reach of the estate" and the court "may not read additional exceptions into the statute"). The answer is that it did not.

In its brief opposing certiorari in the present case, the United States expressed the view that the decision below is consistent with this Court's decision in *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007), which involved an exercise of authority under section 105(a). However, while *Marrama* did rely on section 105(a) in finding that the bankruptcy court had the equitable power to deny a debtor's motion to convert his Chapter 7 case to Chapter 13 where that request was made in bad

faith, *Marrama* does not bestow on a bankruptcy court the broad and unfettered right to deny debtors rights guaranteed to them under other provisions of the Bankruptcy Code. *Marrama* is distinguishable from this case in critical respects, and extending that holding to allow a surcharge on a debtor's homestead exemption would read the decision as granting bankruptcy courts a power far broader than intended and would conflict with other precedents of the Court. First, unlike the case at hand, *Marrama* involved a debtor's bad faith attempt to use the judicial process to further his fraudulent scheme such that the bankruptcy court's ability to deny the conversion was necessary to prevent the court from itself becoming a participant in the fraud. Second, the Court in *Marrama* found independent reasons within the Bankruptcy Code supporting the bankruptcy court's power to deny the conversion that are not present in this case.

1. The *Marrama* Decision Was Necessary To Prevent the Court's Participation in the Debtor's Fraud.

In *Marrama*, the debtor filed verified schedules in his Chapter 7 case that incorrectly represented property that he owned in Maine as having no value and falsely stated that he had not transferred the property during the year preceding the filing of his petition. *Id.* at 368. In fact, the Maine property had significant value,

and the debtor had transferred the property to a trust seven months prior to filing for bankruptcy with the express intention of shielding the property from his creditors' reach. *Id.* After the Chapter 7 trustee expressed his intent to recover the Maine property as an asset of the estate, the debtor *moved the bankruptcy court* to convert his Chapter 7 case to one under Chapter 13, which would have resulted in the disenfranchisement of the Chapter 7 trustee because once a Chapter 7 case is converted, the trustee's service comes to an end. *Id.* at 369. In other words, the debtor requested and required an order from the court to perpetuate his fraudulent scheme. The bankruptcy court denied conversion on the basis that the request was made in bad faith. *Id.* at 370. In other words, the court refused to grant affirmative relief that would have furthered the debtor's plan. The debtor argued on appeal that the plain language of section 706(a) of the Bankruptcy Code, 11 U.S.C. § 706(a), conferred an absolute right to convert his case to a Chapter 13 proceeding. *Id.* This Court, however, affirmed the bankruptcy court's decision, finding that both the equitable power of the court under section 105(a) and a close reading of relevant sections of the Bankruptcy Code supported the court's ability to deny a request for conversion made in bad faith. *Id.* at 371.

In denying the conversion request, the bankruptcy judge rejected the debtor's attempt

at explaining his misstatements as "scrivener's error" and accepted the trustee's contention that the conversion was sought in bad faith. *Id.* at 369-70. In spite of the debtor's attempt to give legitimate reasons for the conversion, it was apparent to the court that the debtor was seeking the court's order in furtherance of his fraud. Had the bankruptcy court lacked the authority to deny conversion, it would have been compelled to knowingly allow a conversion sought solely to prevent the trustee from recovering the Maine property, to the detriment of the debtor's creditors. Thus, the Court's decision allowing the bankruptcy court the power to deny the conversion was critical, not only to the court's ability to "prevent an abuse of process," but to avoid the court taking affirmative action that would have furthered the fraud.

The instant case does not present the same threat to the judicial process present in *Marrama*. Respondent asks this Court to adopt a broad reading of section 105(a), not to protect the integrity of the bankruptcy court in the issuance of its orders, but to recoup the fees and costs expended in responding to Petitioner's claims regarding a fictitious deed of trust. Respondent wishes to create a novel cause of action for his own benefit, not for the benefit of the court as was the case in *Marrama*. Given the unique circumstance in *Marrama* of the need to protect the role of the court in the bankruptcy process, and

the extreme caution this Court has applied when considering a court's power to create new bankruptcy causes of action or rights, *see infra* Section B, *Marrama* should not be read as supporting the creation of a broad equitable power that the Ninth Circuit approved in this case.

2. The Court in *Marrama* Found Significant Support in the Bankruptcy Code for Its Decision.

While the Court in *Marrama* did cite section 105(a) in affirming the bankruptcy court's authority to deny a bad faith debtor's motion for conversion, the Court also found affirmative support for its decision in various sections of the Bankruptcy Code.

To begin with, the Court noted that a Chapter 7 debtor's right under section 706(a) to convert a case to a Chapter 13 proceeding "at any time" was subject to the limitation in section 706(d) that a conversion was permissible only where the debtor was properly a debtor under Chapter 13. *Id.* at 371. The Court found "at least two possible reasons why Marrama may not qualify as such a debtor." *Id.* at 372. First, the Court noted the limit imposed by section 109(e) on the amount of debt that a Chapter 13 debtor may have to qualify for Chapter 13 relief and expressed doubt as to, though did not decide, whether the debtor qualified under that limit.

Id. at 372 & nn.6, 7. Second, the Court referenced section 1307(c), which provides that a Chapter 13 proceeding may be dismissed outright or converted to a Chapter 7 proceeding "for cause." *Id.* at 373. Noting that bankruptcy courts "routinely treat dismissal for prepetition bad faith conduct as implicitly authorized by the words 'for cause,'" the Court reasoned that "a ruling that an individual's Chapter 13 case should be dismissed or converted to Chapter 7 because of prepetition bad-faith conduct ... is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13." *Id.* at 373-74.

Moreover, in finding that section 105(a) gave the bankruptcy court the power to deny the conversion motion, the Court was persuaded by the undisputed judicial power to either dismiss or convert a Chapter 13 case to a Chapter 7 proceeding on the basis of the debtor's bad faith. *Id.* at 375. Refusing to allow the court the discretion to deny a conversion would be illogical in light of the clearly established power to either dismiss the proceedings or to subsequently convert the case back to Chapter 7. *Id.* (stating that section 105(a) "is surely adequate to authorize an immediate denial of a motion to convert filed under § 706 in lieu of a conversion order that merely postpones the allowance of equivalent relief and

may provide a debtor with an opportunity to take action prejudicial to creditors").[2]

In contrast to the wide textual support for denying conversion as discussed in *Marrama*, the provisions of the Bankruptcy Code offer no support for allowing a trustee to surcharge a debtor's exempt assets—indeed, as Petitioner amply explains in his brief, surcharging the debtor's exempt property is fundamentally at odds with Congress's express statutory scheme. The lower courts cited no similar statutory support of the kind present in *Marrama*, but instead relied entirely on the equitable power conveyed by section 105. A close reading of the Bankruptcy Code demonstrates precisely why such a surcharge should not be allowed. *See infra* Section C.

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[2] The First Circuit also found persuasive the bankruptcy court's "unquestioned authority to dismiss a chapter 13 petition ... based upon a showing of 'bad faith' on the part of the debtor," and stated that it could "discern neither a theoretical nor a practical reason that Congress would have chosen to treat a first-time motion to convert a chapter 7 case to chapter 13 under subsection 706(a) differently from the filing of a chapter 13 petition in the first place." *Id.* at 370-71 (*quoting In re Marrama*, 430 F.3d 474, 479 (1st Cir. 2005)).

B. This Court's Prior Decisions Demonstrate that the Bankruptcy Court's Equitable Powers Should Not Be Used To Create New Causes of Action or New Rights Under the Code.

That *Marrama* should not be read to allow bankruptcy courts a broad power under section 105(a) to fashion new remedies or rights is made apparent in light of this Court's clearly established restriction that a bankruptcy court's equitable powers "must and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988). Courts may not rely on equitable considerations as a reason to create a cause of action not specifically prescribed by statute. *See Butner v. United States*, 440 U.S. 48, 54 (1979) (the court could not adopt a federal rule of equity regarding a mortgagee's right to rent where "Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law"); *see also Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 322 (1999) ("To accord a type of relief that has never been available before ... is to invoke a 'default rule,' not of flexibility, but of omnipotence. When there are indeed new conditions that might call for a wrenching departure from past practice, Congress is in a much better position than we both to perceive them and to design the appropriate remedy.")

In *Butner*, this Court addressed the bankruptcy court's limited power to grant equitable relief. 440 U.S. 48. In that case, the Court was asked to determine whether the right of a mortgagee to rents collected during the period between the mortgagor's bankruptcy and a subsequent foreclosure sale was properly determined by a federal rule of equity or by looking to applicable state law. *Id.* at 50. In rejecting the bankruptcy court's ability to create a federal equitable claim to the rents, the Court noted that the Constitution grants to Congress the authority to establish "uniform Laws on the subject of Bankruptcies throughout the United States," U.S. Const., Art. I, § 8 cl. 4, but that Congress had chosen not to enact the rule advocated by the mortgagee. 440 U.S. at 54. Because Congress had intentionally left the determination of the relevant property rights to state law, it was beyond the scope of the bankruptcy court's equitable power to create a federal rule in conflict with that choice. *Id.*

Similarly, in *Ahlers*, the Court reversed the Eighth Circuit's approval of a reorganization plan that allowed the respondent debtors to retain an interest in their property over the objection of the petitioning creditors on the grounds that the plan violated the Bankruptcy Code's absolute priority rule. 485 U.S. at 201-02 (citing 11 U.S.C. § 1129(b)(2)(B)(ii)). In response to the

respondents' argument that the plan should be affirmed on equitable grounds, this Court noted that although "[t]he Court of Appeals may well have believed that petitioners or other unsecured creditors would be better off if respondents' reorganization plan was confirmed," it was the petitioners' "prerogative under the Code," to object to the plan and the courts were obligated, upon such an objection, to abide by the rules set forth in the Code. *Id.* at 207.

The Court's decisions on equitable subordination also demonstrate that, where Congress has clearly established the rights of debtors and creditors in the express provisions of the Bankruptcy Code, it is not for the courts to alter those rights on the basis of equitable considerations. *See United States v. Reorganized CF & I Fabricators of Utah, Inc.*, 518 U.S. 213, 229 (1996) (subordination of government's claim to those of other general unsecured creditors was improper because the "categorical reordering of priorities that takes place at the legislative level of consideration is beyond the scope of judicial authority to order equitable subordination"); *United States v. Noland*, 517 U.S. 535, 541 (1996). In *Noland*, the Court rejected an attempt to subordinate the IRS's claim for a post-petition, non-compensatory tax penalty, which was entitled to priority as an administrative expense. 517 U.S. at 536. In spite of the Sixth Circuit's reasoning that the subordination of the government's claim to the

claims of other creditors who had suffered actual losses served equitable principles, the Court reversed the subordination because it "r[an] directly counter to Congress's policy judgment that a postpetition tax penalty should receive the priority of an administrative expense." *Id.* at 541. Because "Congress could have, but did not, deny noncompensatory, postpetition tax penalties the first priority given to other administrative expenses," the Court reasoned that "bankruptcy courts may not take it upon themselves to make that categorical determination under the guise of equitable subordination." *Id.* at 543.

Following soon after *Noland*, the debtor in *CF & I* sought to subordinate a claim by the IRS for tax liability incurred due to the debtor's failure to make required contributions to pension plans so that it would be junior to other general unsecured claims. 518 U.S. at 217. In spite of the lower courts' finding that "[d]eclining to subordinate the IRS's penalty claim would harm innocent creditors rather than punish the debtor," *id.* at 228 (citation omitted), this Court found that a reordering of the statutory priority that Congress had established was an improper exercise of the court's equitable power. *Id.* at 229.

The decision below in this case is directly in conflict with the concept, established by this line of cases, that a bankruptcy court may not exercise its equitable power to create remedies or

rights that are outside those allowed by the governing statutory regime. Allowing Respondent to surcharge Petitioner's homestead exemption creates a new cause of action on behalf of the trustee that extends far beyond, and conflicts with, "the confines of the Bankruptcy Code." *Ahlers*, 485 U.S. at 206. In exercising its power to establish the bankruptcy laws, Congress could have created an exception to the general rule that exempt property is unreachable by the bankruptcy estate to allow a surcharge on a bad faith debtor's exempt property. However, a bankruptcy court's equitable power may not be used to create such a remedy where Congress has declined to do so. *Noland*, 517 U.S. at 543; *Butner*, 440 U.S. at 54.

Furthermore, the fact that the lower courts' interpretation of section 105(a) would allow Respondent to recover fees and costs incurred because of Petitioner's bad faith conduct is not reason to allow the judicial creation of a new remedy or right that Congress has not authorized. This Court has made clear that, even where principles of equity weigh in favor of one approach, that approach is prohibited where it would allow the court to effectively make legislative determinations that Congress opted not to make. *CF & I*, 518 U.S. at 229.

C. A Surcharge on Exempt Property of the Kind at Issue Here Conflicts with the Plain Language of the Bankruptcy Code and with the Purpose Behind Bankruptcy Exemptions.

In construing and applying the Bankruptcy Code, "[t]he starting point ... is the existing statutory text." *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004). Further, "when the statute's language is plain, the sole function of the courts–at least where the disposition required by the text is not absurd–is to enforce it according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) (internal quotations omitted); *see also Rake v. Wade*, 508 U.S. 464, 471 (1993); *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). As this Court has explained, a cardinal presumption is that Congress "says in a statute what it means and means in a statute what it says there." *Germain*, 503 U.S. at 254. Consistent with this proposition, courts must generally refrain from engrafting limitations on provisions of the Code that do not appear in its text. *E.g.*, *Lamie*, 540 U.S. at 537-38; *United States v. Locke*, 471 U.S. 84, 95 (1985) (courts do not have "carte blanche to redraft statutes in an effort to achieve that which Congress is perceived to have failed to do").

As is relevant here, section 522(l) unambiguously provides that "[t]he debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. ... Unless a party in interest objects, the property claimed as exempt on such list is exempt." 11 U.S.C. § 522(l). Absent a timely objection, exemptions are final and exempt property is unreachable by the trustee or creditors unless a specific exception of the Bankruptcy Code applies.

Petitioner exempted his homestead for the full amount allowed by applicable California state law, Cal. Civ. P. Code § 704.730, and received that property free and clear of the creditors' claims, which right under California law is to be construed liberally in favor of the debtor. *See, e.g., Wells Fargo Fin. Leasing, Inc. v. D&M Cabinets*, 99 Cal. Rptr. 3d 97, 104 (Cal. Ct. App. 2009) ("[T]he homestead law is not designed to protect creditors. ... This strong public policy requires courts to adopt a liberal construction of the law and facts to promote the beneficial purposes of the homestead legislation to benefit the debtor [and his family].") (citations omitted). Not only is there no exception that allows a surcharge on Petitioner's homestead exemption, but the fees that Respondent seeks to recoup are an "administrative expense" under section 503 of the Code. 11 U.S.C. § 503(b)(4). Pursuant to section 522(k), exempt property simply "is not liable for payment of any administrative ex-

pense," other than in circumstances not applicable here. 11 U.S.C. § 522(k).

Moreover, as the Court has explained, the provisions of the Bankruptcy Code are properly construed "holistically," taking into account the structure of the Code as a whole, the relationship between its various provisions, and Congress's collective and systematic choice of words. *See United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 369-71 (1988) (construing several sections of the Bankruptcy Code together and observing that "[s]tatutory construction...is a holistic endeavor"); *Kelly v. Robinson*, 479 U.S. 36, 43 (1986) ("In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law") (citations omitted). The Court has made clear that "[w]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *TRW Inc. v. Andrews*, 534 U.S. 19, 28 (2001) (*quoting Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-617 (1980)).

Where Congress intends to create exceptions to the general rule that exempt property is beyond the reach of the estate, it does so unambiguously. *E.g.*, 11 U.S.C. § 522(c), (k), (q). These exceptions do not include a surcharge for a

debtor's alleged bad faith during the course of the bankruptcy proceedings, and a court may not create such an exception of its own accord. Moreover, the exceptions to the general rule set forth in section 522(q) further clarify that Congress could not have intended that a debtor's bad faith in filing his bankruptcy petition could result in a forfeit of the homestead exemption. Under section 522(q), a debtor exempting property under state or local law is prohibited from claiming more than $125,000 on his or her homestead if (1) "the debtor has been convicted of a felony ... which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions" of the Bankruptcy Code or (2) the debtor owes a debt resulting from a violation of federal or state securities laws; fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of a security registered under the federal securities laws; or "any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years." 11 U.S.C. § 522(q). Congress places such importance on the preservation of the homestead exemption that it made the measured decision to allow a person *convicted of a felony* in connection with his or her bankruptcy case to claim up to $125,000 in spite of his or her *criminal* conduct. It follows, therefore, that a debtor cannot be deprived of his entire homestead exemption for the significantly less serious

offense of misrepresenting the value of his assets on his bankruptcy schedules or otherwise acting in bad faith.

Finally, even if it were not clear from the text of the Bankruptcy Code that a surcharge on a debtor's homestead exemption is improper, allowing such a surcharge is entirely at odds with the Code's fundamental "fresh start" policy. To begin with, exemptions in bankruptcy cases are clearly part of the fundamental bankruptcy concept of a "fresh start." *Rousey v. Jocaway*, 544 U.S. 320, 325 (2005) ("To help the debtor obtain a fresh start, the Bankruptcy Code permits him to withdraw from the estate certain interests in property, such as his car or home, up to certain values."). As explained in the House Report accompanying section 522 of the Code:

> The historical purpose of these exemption laws has been to protect a debtor from his creditors, to provide him with the basic necessities of life so that even if his creditors levy on all of his non-exempt property, the debtor will not be left destitute and a public charge... [T]he bill continues to recognize the states' interest in regulating credit within the states, but enunciates a bankruptcy policy favoring a fresh start.... Bankruptcy exists to pro-

> vide relief for an overburdened debtor.

H.R. REP. NO. 595, 95th Cong. 126 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6087. Because this fresh start value is fundamental to the administration of bankruptcy, procedures that burden the debtor's exemption entitlements should be construed narrowly. *See Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998).

Respondent advocates a broad reading of section 105(a) that would burden a debtor's claim to the statutory homestead exemption in a manner that is clearly contrary the text of the Bankruptcy Code and the relevant purposes that underlie it. The decision of the Ninth Circuit accepting Respondent's position is fundamentally unsound.

CONCLUSION

For the foregoing reasons, as well as those briefed by Petitioner, the decision of the court below should be reversed.

Respectfully submitted,

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AMICUS CURIAE BRIEF

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Supreme Court of the United States

STEPHEN LAW,

Petitioner,

v.

ALFRED SIEGEL, TRUSTEE,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF NATIONAL ASSOCIATION OF BANKRUPTCY TRUSTEES AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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STATEMENT OF INTEREST OF NABT AS *AMICUS CURIAE*

The National Association of Bankruptcy Trustees ("NABT") is a non-profit association formed in 1982 to address the needs of chapter 7 bankruptcy trustees throughout the country, and to promote the effectiveness of the bankruptcy system as a whole.[1] NABT is a premier national professional association of bankruptcy trustees. Of the approximately 1,100 bankruptcy trustees currently receiving new cases, 835 are NABT members. As a result, NABT is intimately familiar with the application of the Bankruptcy Code in the practical context of administration of trustee cases. NABT is also active in shaping legislation and has a strong interest in ensuring proper interpretation of the Bankruptcy Code[2] as it affects trustees.

The issue presented in this appeal is of critical importance to NABT and its trustee members. The Court's decision in this case will affect the ability of trustees to effectively and expeditiously administer

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[1] All parties have consented to the filing of this *amicus* brief. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* has made a monetary contribution intended to fund its preparation or submission.

[2] United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (hereinafter "Bankruptcy Code" or "Code"). Unless otherwise noted, all statutory citations in text are to provisions of the Code. Likewise, any references to "Rules" or "Bankruptcy Rules" are references to the Federal Rules of Bankruptcy Procedure.

chapter 7 cases in accordance with their statutory and fiduciary mandates. Trustees are duty-bound to investigate the financial affairs of the debtor, collect and reduce to money the property of the estate, and distribute such proceeds to creditors according to the Code's distribution scheme. When debtors fraudulently conceal or undervalue assets, and thwart the trustee's efforts in the chapter 7 liquidation process, they should not be entitled to retain all of their exempt property while the estate's creditors suffer the full financial consequences of the debtor's abuse.

In the exercise of trustee duties, the "surcharge" or "forfeiture" remedy is needed to sanction atypical debtors who commit fraud and abuse while seeking the privileges and protections of bankruptcy. In this case, the magnitude of the debtor's misconduct constitutes extraordinary circumstances warranting surcharge of exempt property. The debtor committed fraud on the court and deployed highly abusive litigation tactics which caused the trustee and the estate to incur over $400,000 in unnecessary litigation costs, significantly delaying the trustee's administration of the case and diminishing estate assets. Debtors must be held accountable for such extraordinary circumstances of fraud and abuse of the bankruptcy system.

SUMMARY OF ARGUMENT

The Bankruptcy Code provides for the appointment of a trustee in chapter 7 cases to administer

estate property. 11 U.S.C. §§ 701, 704. Chapter 7 trustees are charged with numerous statutory and other duties intended to promote the efficient administration of bankruptcy cases and to preserve the integrity of the bankruptcy system. Among other things, chapter 7 trustees are charged with investigating the financial affairs of the debtor, investigating fraud and misconduct, collecting and reducing to money property of the estate, making distributions to creditors, and closing the estate as expeditiously as is compatible with the best interests of parties in interest. 11 U.S.C. § 704.

In order for the statutory scheme to properly function, the Code requires full and accurate disclosures by debtors. Under § 521(a)(1), a debtor is obligated to file verified schedules of assets and liabilities, schedules of income and expenses, and a statement of financial affairs. 11 U.S.C. § 521(a)(1). Good faith disclosure is essential to the administration of chapter 7 cases, and is vital to maintaining the integrity of the bankruptcy system. Debtors are required, by statute, to cooperate with trustees in order to enable them to efficiently execute their duties under the Code. 11 U.S.C. § 521(a)(3).

In an asset case, once a debtor has disclosed all of his assets and liabilities and has cooperated with the trustee so that the trustee can reduce to money property of the estate, the Code provides for the division and distribution of such funds according to a carefully designed statutory scheme. *See* 11 U.S.C. §§ 507, 726. This scheme implements a balanced and

equitable allocation of property between the debtor and his creditors. *See id.* In exchange for performing these statutory duties and good faith obligations under the Code, the debtor receives a discharge of debts and is entitled to exempt and thereby retain certain interests in property. *See* 11 U.S.C. §§ 522, 727. Only through this mandated submission to the bankruptcy process does the "honest but unfortunate debtor" obtain a "fresh start" – one of the primary aims of bankruptcy. *See Grogan v. Garner*, 498 U.S. 279, 286, 287 (1991). Thus, fresh start policy is premised on the debtor's truthful disclosures and cooperation with the trustee in the bankruptcy process.

The overwhelming majority of chapter 7 debtors provide candid and complete disclosures and cooperate in the liquidation process. Occasionally, however, debtors abuse the system by omitting or undervaluing assets in their disclosures in an attempt to keep this value hidden from the court, the trustee and creditors. Other times, debtors present false claims in an effort to manipulate the bankruptcy process and hinder the trustee's administration of estate assets.

In this case, the debtor's abuse of the bankruptcy process was so extensive and pervasive that it presented truly exceptional circumstances, compelling the bankruptcy court to fashion appropriate equitable relief. Specifically, the debtor misrepresented value and concocted false lien claims in an effort to mislead the trustee and creditors and conceal the true value of property of the estate. The debtor lied to the bankruptcy court about the nature and content of public

records and case filings in support of his false claims. As part of this fraudulent scheme, the debtor foisted needless, baseless, exhaustive, and expensive litigation and appeals on the trustee in an endless effort to exert financial pressure on the estate and prevent the trustee from fulfilling his duties under the Code.

Where exceptional circumstances like this exist, bankruptcy courts must be authorized to enter orders providing for the surcharge or limited forfeiture of certain rights by debtors.[3] This power is consistent with the scope of authority granted by § 105(a) and the inherent power of federal courts to remedy abuse. Thus, the rare debtor who abuses the bankruptcy process forfeits his ability to benefit from rights that are available to the "honest but unfortunate debtors" bankruptcy laws are designed to protect. *See Local Loan Co. v. Hunt*, 292 U.S. 234, 244-45 (1934). This authority, appropriately circumscribed, is likewise consistent with this Court's opinions, including *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007), and *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991).

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[3] The trustee notes in his merits brief at p. 2, n. 1, that the "surcharge" nomenclature is an awkward fit in that the remedy imposed in surcharge cases does not impose charges or levies against the debtor or his property. The remedy imposed is more in the nature of an equitable forfeiture, but the vast majority of courts speak in terms of surcharge, and the terms are used interchangeably herein.

ARGUMENT

I. The Bankruptcy Code's Statutory Framework

A. The Estate and the Trustee

The Code provides for the appointment of a trustee in chapter 7 cases to administer estate property. 11 U.S.C. §§ 701, 704. Chapter 7 trustees are charged with a broad array of statutory and other duties intended to promote the efficient administration of bankruptcy cases, and to preserve the integrity of the bankruptcy system. *See generally*, Vol. 6, ALAN N. RESNICK AND HENRY J. SOMMER, COLLIER ON BANKRUPTCY ¶ 704.01 (16th ed. 2013) (hereinafter "COLLIER ON BANKRUPTCY"); *see also* U.S. Department of Justice, Executive Office for United States Trustees, Handbook for Chapter 7 Trustees (Effective October 1, 2012) (the "TRUSTEE HANDBOOK"), available at http://www.justice.gov/ust/eo/private_trustee/library/chapter07/ (last visited October 25, 2013), at pp. 1-2.

Chapter 7 trustees are charged with investigating the financial affairs of the debtor. 11 U.S.C. § 704(a)(4); 6 COLLIER ON BANKRUPTCY ¶ 704.07. Chapter 7 trustees must "undertake an immediate examination and investigation of the debtor's liabilities and property. . . . [to] ensure that the court and the parties to the case are supplied with the facts essential to proper administration of the debtor's estate." 6 COLLIER ON BANKRUPTCY ¶ 704.07. A chapter 7 trustee's investigation includes questioning the debtor under oath at the meeting of creditors to verify information

and investigate the scope and value of assets, claims of creditors, liens against property, and other matters impacting the bankruptcy estate. *See* 11 U.S.C. § 341; 6 COLLIER ON BANKRUPTCY ¶ 704.07; TRUSTEE HANDBOOK, pp. 3-7, pp. 4-2. In this gatekeeping capacity, chapter 7 trustees are duty-bound to investigate fraud, misconduct, fraudulent transfers, and the validity of claims. *See id.*

Chapter 7 trustees are also charged with collecting and reducing to money property of the estate, and making distributions to creditors. 11 U.S.C. § 704(a)(1); 4 COLLIER ON BANKRUPTCY ¶ 521.15[1] (discussing trustee's duties in relation to debtor's duty to cooperate); 6 COLLIER ON BANKRUPTCY ¶ 704.02. Indeed, the TRUSTEE HANDBOOK calls this the "principal duty of the trustee." TRUSTEE HANDBOOK, p. 4-1. The statutory directive in § 704(a)(1) "gives the trustee the authority to exercise wide-ranging authority over the debtor's assets[.]" 6 COLLIER ON BANKRUPTCY ¶ 704.02; *see* TRUSTEE HANDBOOK, p. 4-6 (noting obligation to obtain control over estate property), p. 4-11 (discussing turnover demands). In order to implement this obligation, trustees may demand turnover of estate assets, and debtors are obligated to cooperate. 11 U.S.C. §§ 521(a)(3), 542.

In assessing whether to take control of and liquidate property of the estate, a chapter 7 trustee must assess the value of assets, claims of exemptions, and whether the property is encumbered by liens, in order to determine whether there is sufficient value to warrant liquidation. *See* 6 COLLIER ON BANKRUPTCY

¶ 704.02[1]; TRUSTEE HANDBOOK, p. 4-1 (trustee must administer cases so as to "maximize and expedite dividends to creditors."). In doing so, the trustee must review the debtor's sworn schedules and statements, examine the debtor under oath, and conduct an independent investigation to determine whether sufficient value exists such that assets should be administered. 11 U.S.C. § 704; TRUSTEE HANDBOOK, pp. 4-3 – 4-4 (noting obligation of chapter 7 trustee to inventory debtor's property), p. 4-5 (noting obligation of chapter 7 trustee to analyze, *inter alia*: (i) fair market value, (ii) the amount, validity and perfection of purported security interests, and (iii) the costs to be borne by the estate in recovering property), pp. 4-14 – 4-15 (same).[4]

Finally, chapter 7 trustees are charged with closing the estate "as expeditiously as is compatible with the best interests of parties in interest." 11 U.S.C. §§ 704(a)(1), (4); *see* 6 COLLIER ON BANKRUPTCY ¶ 704.02[3] (describing this duty as "the main object

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[4] Chapter 7 trustees must also: (i) object to a debtor's discharge where appropriate, (ii) provide information to creditors, the court, and the United States Trustee, (iii) prepare and file periodic and final reports, (iv) provide notices in cases involving claims arising out of domestic relationships, (v) review a debtor's claim of exemptions, (vi) refer cases of bad faith, abuse, and bankruptcy crimes to the United States Trustee, (vii) review the timeliness and sufficiency of documents filed by the debtor and assess whether abuse is present that may provide a basis for dismissal under 11 U.S.C. § 707(b), and (viii) examine proofs of claim. *See generally* 11 U.S.C. § 704; 6 COLLIER ON BANKRUPTCY ¶ 704; TRUSTEE HANDBOOK, pp. 4-1 – 4-36.

and purpose of the [trustee's] appointment"). In undertaking this duty, and others outlined above, trustees often: (i) collect accounts, (ii) institute legal actions, (iii) seek orders compelling debtors or third parties to turn over estate property, (iv) sell property of the estate, (v) deal with contracts to which the estate is a party, (vi) challenge fraudulent and preferential transfers, and (vii) compromise and resolve claims. *See* 6 COLLIER ON BANKRUPTCY ¶ 704.02[3]; TRUSTEE HANDBOOK, pp. 4-1 – 4-2, pp. 4-12.

B. Debtor's Sworn Disclosures and Cooperation with the Trustee

In order for the statutory scheme to work in chapter 7 cases, debtors must provide full and accurate disclosures in their sworn schedules and statements. Under § 521(a)(1) of the Code, the debtor is obligated to file verified schedules of assets and liabilities, schedules of income and expenses, and a statement of financial affairs. 11 U.S.C. § 521(a)(1); FED. R. BANKR. P. 1008.[5] The debtor's duties also include cooperation with the trustee to enable the trustee to perform the trustee's duties under the Code. 11 U.S.C. § 521(a)(3).

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[5] Rule 1008, which references 28 U.S.C. § 1746, requires all debtors to verify under oath or subscribe under pains and penalties of perjury to the truthfulness of "all petitions, lists, schedules, statements and amendments" filed in their bankruptcy cases.

A chapter 7 trustee's ability to properly administer a case in an efficient and cost-effective manner is dependent upon a debtor's cooperation and candid disclosures. TRUSTEE HANDBOOK, p. 4-3; 4 COLLIER ON BANKRUPTCY ¶ 521.15[5] ("'Cooperate' is a broad term. . . . whenever the trustee calls upon the debtor for assistance in the performance of his duties, the debtor is required to respond. . . ."); 6 COLLIER ON BANKRUPTCY ¶ 704.08[1] (noting duty to cooperate in connection with discussion of trustee's duties). Indeed, fresh start policy is premised on the debtor's truthful disclosures and cooperation in the bankruptcy process. *See In re Rolland*, 317 B.R. 402, 413-14 (Bankr. C.D. Cal. 2004); *In re Robinson*, 292 B.R. 599, 607-08 (Bankr. S.D. Ohio 2003); *In re Colvin*, 288 B.R. 477, 479-81 (Bankr. E.D. Mich. 2003); *Job v. Calder (In re Calder)*, 93 B.R. 734, 738 (Bankr. D. Utah 1988), *aff'd*, 907 F.2d 953 (10th Cir. 1990) (citing *Chalik v. Moorland (In re Chalik)*, 748 F.2d 616, 618 (11th Cir. 1984)).

Thus, a debtor's good faith reporting and cooperation are essential to administration of chapter 7 cases. Moreover, enforcement of these debtor mandates is vital to maintaining the integrity of the entire bankruptcy system. *In re Rolland*, 317 B.R. at 413; *Cusano v. Klein*, 264 F.3d 936, 946 (9th Cir. 2001).

C. Division of Estate Property, Exemptions, and Discharge

Once the debtor has disclosed all assets, and cooperated with the trustee so that the trustee can reduce to money all property of the estate, the Code provides for the balanced and equitable allocation and distribution of property between the debtor and his creditors. *See* 11 U.S.C. §§ 507, 522, 726. After the debtor's exemptions are properly claimed and allowed, non-exempt assets are distributed to creditors according to a predetermined distribution scheme. *See id.* In furtherance of fresh start policy, the honest debtor who cooperates and complies with the foregoing statutory requirements receives a discharge of debts, and is also entitled to exempt certain interests in property. *See* 11 U.S.C. §§ 522, 727.

II. Bankruptcy Courts May Order Surcharge or Forfeiture of Exempt Property to Remedy a Debtor's Abusive Conduct

When debtors conspire to retain more assets or value than they are entitled to by failing or refusing to comply with the disclosure, cooperation, and turnover requirements of §§ 521, 542 and 704, the Code's distribution scheme goes awry. Sidestepping the foregoing provisions, the dishonest debtor may not then turn to § 522 as a shield to the consequences of his own abuse.

Here, the debtor concealed the true value of property of the estate by concocting a false lien claim

and substantially misrepresenting its value, and then fought turnover of this estate asset to the trustee for its ultimate sale. Without the diligence of the trustee and the bankruptcy court's forfeiture order, the debtor would have retained substantially more asset value than permitted by the Code's exemption scheme and would have foisted upon the estate the full extent of the exorbitant costs to the estate of his abusive conduct.

A. The Bankruptcy Code Must be Construed to Benefit Honest But Unfortunate Debtors and to Discourage Abuse

A fundamental purpose of the Code is to provide the "honest but unfortunate debtor" with a "fresh start." *See Grogan v. Garner*, 498 U.S. 279, 286, 287 (1991). As the Court articulated in *Local Loan Co. v. Hunt*, bankruptcy protection is designed to provide:

> . . . . *the honest but unfortunate debtor* who surrenders for distribution the property which he owns at the time of bankruptcy, a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt. The various provisions of the Bankruptcy Act were adopted in the light of that view and are to be construed when reasonably possible in harmony with it so as to effect the general purpose and policy of the act.

292 U.S. 244-45 (emphasis supplied) (internal citations and quotations omitted).

These same principles were articulated in *Pepper v. Litton*, 308 U.S. 295 (1939). *Pepper* involved the prepetition manipulation of claims and bogus liens by Litton, who "had no intention of trying to satisfy his confessed judgment" and was using the judgment lien "as a shield against the Pepper debt." 308 U.S. at 297 (internal quotations omitted). The trustee in bankruptcy later challenged the judgment lien and debt, contending that it was part of a "deliberate and carefully planned attempt to avoid the payment of a just debt[,]" that Litton and the judgment lien creditor "were in reality the same[,]" and that the alleged underlying claims giving rise to the bogus judgment "did not represent an honest debt of the bankrupt corporation." *Id.* at 301 (internal quotations omitted).

The *Pepper* court recognized the powers and duties of the trustee and the equitable nature of bankruptcy proceedings. *Id.* The Court observed that "for many purposes, 'courts of bankruptcy are essentially courts of equity, and their proceedings inherently proceedings in equity[.]'" *Id.* at 304 (quoting *Local Loan Co. v. Hunt*, 292 U.S. 234, 240 (1934)). Considering the exercise of trustee duties and powers in seeking the bankruptcy court's equitable intervention, the Court stated:

> The bankruptcy courts have exercised these equitable powers in passing on a wide range of problems arising out of the administration of bankrupt estates. They have been invoked to the end that fraud will not prevail, that substance will not give way to form, that

> technical considerations will not prevent substantial justice from being done.

Id. at 304. The Court further instructed that bankruptcy courts have "the power to sift the circumstances surrounding any claim to see that injustice or unfairness is not done in administration of the bankrupt estate." *Id.* at 308.

1. This Court's Decision in *Marrama* Supports Equitable Surcharge or Forfeiture to Prevent Abuse

These fundamental principles of bankruptcy law articulated in *Local Loan Co.* and *Pepper* provide the foundation for this Court's decision eight decades later in *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007). *Marrama* held that, as here, a debtor found guilty of serious misconduct will forfeit an otherwise absolute statutory right under the Bankruptcy Code in order to prevent injustice and unfairness, and to uphold the integrity of the bankruptcy process. *Id.*

In *Marrama*, the bankruptcy court determined that the debtor made a number of "misleading or inaccurate" statements of fact about his residence. *Id.* at 368. The debtor misrepresented the value of this property, and made further misrepresentations about pre-bankruptcy transfers of the property. *Id.* Similar to this case, and contrary to the debtor's sworn disclosures, the property at issue "had substantial value" to the estate. *Id.*

The issue in *Marrama* was whether the debtor had an "absolute" right to convert his chapter 7 case to a case under chapter 13, despite his fraudulent conduct. The debtor argued that § 706(a) must be read to grant debtors an "absolute" or unqualified right to convert. *See* 11 U.S.C. § 706(a). The Court disagreed, observing that the debtor was "not a member of the class of honest but unfortunate debtors that the bankruptcy laws were designed to protect." *Id.* at 373 (internal quotations omitted) (citing *Grogan v. Garner*, 498 U.S. 279 (1991)). Underscoring that the debtor's conduct was "atypical," *id.* at 375, n. 11, the *Marrama* court opined:

> The class of honest but unfortunate debtors who *do* possess an absolute right to convert their cases from Chapter 7 to Chapter 13 includes the vast majority of the hundreds of thousands of individuals who file Chapter 7 petitions each year. Congress sought to give *these* individuals the chance to repay their debts should they acquire the means to do so
>
> . . . .
>
> Nothing in the text of either § 706 or § 1307(c) (or the legislative history of either provision) limits the authority of the court to take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he *is not entitled to the relief available to the typical debtor*.

Id. at 374-75 (emphasis supplied). The Court also recognized the bankruptcy court's authority under

§ 105(a), and the "inherent power of every federal court to sanction 'abusive litigation practices,'" as consistent with its determination that the debtor had forfeited his right to convert his case from one chapter to another. *See id.* at 375-76.

These principles of bankruptcy law are fully consistent with the Court's decision in *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991), which was cited in *Marrama* (along with § 105(a) of the Code). *See Marrama*, 549 U.S. at 375-76 (discussing the "inherent power of every federal court to sanction 'abusive litigation practices'") (citing *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 765 (1980)); *Chambers*, 501 U.S. at 45-46 (discussing the inherent power of federal courts to sanction litigation abuse). Indeed, in *Chambers*, the Court stated:

> We discern no basis for holding that the sanctioning scheme of the statute and the rules displaces the inherent power to impose sanctions for the bad-faith conduct described above. These other mechanisms, taken alone or together, are not substitutes for the inherent power, for that power is both broader and narrower than other means of imposing sanctions.

Chambers, 501 U.S. at 45-46.

The *Marrama* decision thus embodies the fundamental principle that bankruptcy courts have meaningful authority to sanction a debtor's bad-faith

litigation abuse, and can order the forfeiture of otherwise available bankruptcy relief in furtherance thereof.

B. Surcharge is a Valid Remedy Pursuant to the Scope of Authority Granted to Bankruptcy Courts Through § 105(a) of the Bankruptcy Code

Section 105(a) of the Code grants bankruptcy courts broad powers, consistent with the fundamental nature of bankruptcy courts as courts of equity. Section 105(a), entitled "Power of court," provides:

> (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

Section 105(a) represents an expansion of the power granted to bankruptcy courts as compared with its predecessor statute, section 2a(15) of the Bankruptcy Act. Whereas section 2a(15) allowed courts to "make such orders, issue such process, and

enter such judgments in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this Act," the Code broadened bankruptcy courts' powers through § 105(a), which allows not only orders that are "necessary," but also orders that are "appropriate" to carry out the provisions of the Code. *See* 2 COLLIER ON BANKRUPTCY ¶ 105.LH (discussing historical development of statute and similarity of § 105(a) to the All Writs Statute).

Where a debtor acts dishonestly and frustrates the Code's purposes, § 105(a) grants bankruptcy courts meaningful equitable power to prevent the debtor from profiting from his misdeeds while benefiting from the Code's protections. These powers, implemented through the statute, are consistent with the guiding principles in *Local Loan Co.*, *Pepper*, *Grogan*, *Marrama,* and *Chambers*, discussed above.

In practice, § 105(a) has been used with success to stem abuse and restore to the estate the value of non-exempt property wrongfully retained by the debtor. In cases where non-exempt assets are dissipated or concealed, and debtors otherwise engage in egregious misconduct seeking to withhold property of the estate from the trustee, courts have turned to § 105(a) and the court's inherent equitable powers to fashion effective remedies. *See*, *e.g.*, *Malley v. Agin*, 693 F.3d 28 (1st Cir. 2012); *Latman v. Burdette*, 366 F. 3d 774 (9th Cir. 2004); *In re Onubah*, 375 B.R. 549 (9th Cir. BAP 2007); *In re Nolan*, Case No. 09-31456, 2013 WL 3153849 (Bankr. W.D. N.C. June 19, 2013);

In re Spiers, Case No. 11-32345, 2013 WL 319785 (Bankr. W.D. N.C. Jan. 28, 2013); *In re Price*, 384 B.R. 407 (Bankr. E.D. Va. 2008); *In re Koss*, 319 B.R. 317 (Bankr. D. Mass. 2005); *In re Karl*, 313 B.R. 827 (Bankr. W.D. Mo. 2004). *See also Scrivner v. Mashburn (In re Scrivner)*, 370 B.R. 346 (10th Cir. BAP 2007), *rev'd*, *In re Scrivner*, 535 F.3d 1258 (2008), *cert. denied*, *Mashburn v. Scrivner*, 556 U.S. 1126 (2009).

The First Circuit's recent decision in *Malley v. Agin* is consistent with the principles outlined above and with the historical development of the statute, and exemplifies an appropriate use of § 105(a) to stem fraud and abuse through surcharge. *See* 693 F.3d 28 (1st Cir. 2012). In *Malley*, the debtor misrepresented a prepetition sale involving his residence. *Id.* at 28. The debtor "repeatedly declared and swore under oath" that his wife obtained the entire sale proceeds and that he received nothing. *Id.* In reality, however, the debtor received $25,000 in proceeds, which he dissipated by the time the trustee discovered the debtor's fraud. *Id.* at 29. The First Circuit observed that "[the debtor's] willful concealment of the funds . . . was, of course, a violation of his disclosure obligation under 11 U.S.C. § 521, compounded by continuing misrepresentation, all of which amounted to a fraud on the court, the trustee, and the general creditors." *Id.*

Responding to the debtor's argument that exemptions in bankruptcy are inviolate, the First Circuit disagreed:

> Should [the debtor's] interest in [the residence] be recognized as "exempted under this section" when its exemption would consummate a fraud on creditors by giving the debtor a greater exemption in fact than the code entitles him to claim in law? We naturally suppose that Congress intended bankruptcy courts to be able to enforce the "provisions" requiring honest disclosure on the part of the debtor, *see* § 521, and placing limits on exemption claims, *see* § 522.

Id.

Next, the First Circuit addressed the debtor's contention that § 105(a) relief was strictly limited and improperly pursued by the trustee. The court repudiated the debtor's narrow interpretation, astutely analyzing the statutory construct of § 105(a):

> To start with, the limitation to carrying out "provisions" must be read within the entire section in which it occurs, which in its second sentence authorizes the court *sua sponte* to take "any action necessary or appropriate . . . to prevent an abuse of process." We have been given no reason to think that Congress would have intended the spaciousness of this authority to be confined only to *sua sponte* action as distinct from rulings at a trustee's behest, and it makes sense to read the second sentence's authority to prevent abuse of process as an example of what the first sentence speaks of as action "necessary or appropriate to carry out the provisions by this title."

Id. at 30.

Thus, determining that the bankruptcy court could act at the trustee's behest, the First Circuit applied its construction of § 105(a) to the abuse at hand:

> There could not be a clearer example of foiling abuse of process than a surcharge order mitigating the effect of fraud in retaining non-exempt assets and thus enhancing the set-aside for a fresh start beyond the amount Congress provided for the honest debtor. Nor can one easily imagine an order more necessary, for although the enumerated remedies of dismissal or denial of discharge penalize the dishonest debtor, they add nothing to the pot for listed creditors, who would otherwise bear the brunt of the fraud.

Id.

In this case, the matter to be vindicated was intentional undervaluation, the bogus lien claim and the need for the trustee to prosecute and invalidate the lien so that non-exempt value could be liquidated to fund a distribution to creditors. In pursuing this corrective action for the benefit of the estate, the trustee's efforts were met with bad faith litigation tactics and the debtor's refusal to cooperate and turn over estate property for sale. In light of the debtor's fraud and litigation abuses, the courts below properly determined that exceptional circumstances existed and the bankruptcy court rightfully invoked the surcharge remedy to place at least some of the economic burden of the debtor's abuse where it belonged – on the debtor. *See* JA52a ("The BAP properly

affirmed the bankruptcy court's order granting the trustee's surcharge motion because the surcharge was calculated to compensate the estate for the actual monetary costs imposed by the debtor's misconduct, and was warranted to protect the integrity of the bankruptcy process."); JA74a-75a ("[B]ankruptcy court did not abuse its discretion in deciding to impose an equitable surcharge on Debtor's homestead exemption."); JA93a (noting costs).

C. Surcharge Orders to Remedy Fraud are Thoroughly Grounded in the Provisions of the Code

When invoking § 105(a), courts must remain within the confines of the Bankruptcy Code. *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988). Application of § 105(a) must be consistent with the Code's other provisions and the substantive rights granted by the Code. *In re Nosek*, 544 F.3d 34, 44 (1st Cir. 2008). Nonetheless, § 105(a) confers "broad authority" on bankruptcy courts, thus enabling them to "facilitate the implementation of other Bankruptcy Code provisions." *Cuevas-Segarra v. Contreras*, 134 F.3d 458, 459-60 (1st Cir. 1998) (quoting *Noonan v. Sec'y of Health & Human Servs. (In re Ludlow Hosp. Soc., Inc.)*, 124 F.3d 22, 27 (1st Cir. 1997)); *see also In re Hannigan*, 409 F.3d 480, 481 (1st Cir. 2005).

With this interpretive framework in mind, the *Malley* court concluded its analysis by tying invocation of § 105(a) to enforcement of §§ 521 and 522 of the Code:

> Finally, it should be recalled, this line of reasoning does not enlarge the court's authority beyond "carry[ing] out the provisions" of the code. When the concealed assets have disappeared, as the $25,000 seems to have done, surcharge is an appropriate and necessary way to vindicate § 521, requiring honest disclosure of non-exempt assets, and § 522, regulating the determination of legitimate exemptions for the debtor's benefit. If § 105(a) was not meant to empower a court to issue an order like the one before us, it is hard to see what use Congress had in mind for it.

Malley, 693 F.3d at 30.

As in *Malley*, in this case the bankruptcy court's exercise of equitable power was consistent with § 105(a)'s mandate, inasmuch as the surcharge order was necessary and appropriate to vindicate the Code's provisions regarding a debtor's duty of honest disclosure and regulation of legitimate exemption rights under §§ 521 and 522 of the Code.

Moreover, surcharge orders under § 105(a) are thoroughly grounded in the implementation of various other Code provisions, including §§ 507, 541, 542, 704, and 726. These provisions, together with §§ 521 and 522, implement the most fundamental purposes of the Code, and § 105(a), as well as the court's inherent equitable powers, provides the authority for bankruptcy courts to ensure that they are adhered to and enforced.

1. Surcharge Enforces the Debtor's Obligation to Make Truthful Disclosures and Turnover Property of the Estate

When a debtor is dishonest in his disclosures in an effort to hide and retain for his own benefit property of the estate, and then refuses to turnover such property to the trustee, he defies the directives of §§ 521, 541, 542 and 704 – which together establish the debtor's duty to make accurate disclosures, cooperate with the trustee, and turnover property of the estate. Surcharge is an effective way to remedy these failures.

The Code's other remedies, such as denial of discharge, do not provide effective redress: while denial of the debtor's discharge punishes the debtor, surcharge orders are often necessary to replenish the value of the stolen or concealed property to the estate. *See Malley*, 693 F.3d at 30 ("[A]lthough the enumerated remedies of dismissal or denial of discharge penalize the dishonest debtor, they add nothing to the pot for listed creditors, who would otherwise bear the brunt of the fraud."). Likewise, turnover orders, alone, are often an insufficient remedy. As was observed by the Ninth Circuit in *Latman*, a turnover order "would not be effective if the assets withheld from the trustee were subsequently lost or otherwise converted by the debtor for personal benefit." 366 F.3d at 785 n. 8.

2. Surcharge Implements the Code's Division of Exempt and Non-Exempt Assets and Equitable Distribution Scheme

Surcharge implements the Code's equitable division of property, as set forth in §§ 507, 522, and 726. The Code divides property between debtor and creditors according to the Code's overarching policies: a fresh start for the debtor and equitable distribution among his creditors. Section 522 allows the debtor to retain certain interests in property that Congress has determined are necessary for the debtor's fresh start. Sections 507 and 726 then provide for the equitable distribution of any non-exempt property among the debtor's creditors, while affording priority treatment to certain classes of creditors, such as wage claimants, taxing authorities, and domestic support creditors. *See* 11 U.S.C. §§ 507, 704.

When a debtor conceals value in an effort to retain for himself more property than is permitted by § 522, and in doing so imposes substantial costs on the bankruptcy estate, the Code's carefully balanced distribution scheme is disrupted. Surcharging exempt assets to the extent necessary to offset costs incurred as a result of a debtor's bad faith litigation abuse is appropriate. Indeed, concealing and retaining non-exempt assets is "tantamount to claiming an additional and unauthorized exemption." *Latman*, 366 F.3d at 352; *see also In re Onubah*, 375 B.R. at 553 (surcharge is appropriate in "exceptional circumstances, [which] are present when a debtor engages

in inequitable conduct that, when left unchallenged, denies creditors access to property in excess of that which is properly exempted under the Bankruptcy Code").

The debtor's misconduct would thereby subvert the Code's directives that the debtor retain only a set amount of property to further his fresh start and that any non-exempt property be available to satisfy creditor claims. Thus, a surcharge order is a necessary and appropriate vehicle to implement the Code's carefully balanced division of assets and distribution scheme.

3. The Surcharge Remedy Plays an Important Role in Stemming Debtor Abuse

A survey of representative cases employing the surcharge remedy reveals the important role surcharge orders play in stemming debtor abuse and preserving the integrity of the bankruptcy system.

In *Latman v. Burdette*, the seminal case on surcharge, the Ninth Circuit Court of Appeals issued a surcharge order to stem contemptuous conduct by the debtor during the pendency of the bankruptcy case. 366 F.3d 774. Seeking to remedy a fraud on the bankruptcy court, the Ninth Circuit upheld surcharge of the debtors' wild card exemption to compensate the estate for the debtors' willful failure to account for undisclosed proceeds of non-exempt assets. *Id.* As the court stated, "the surcharge remedy protected the

[debtors'] creditors by preventing the [debtors] from sheltering more assets than permitted by 11 U.S.C. § 522." *Id.* at 785.

In *In re Koss*, the debtor argued that using § 105(a) to surcharge exempt assets overextends a bankruptcy court's equitable powers. 319 B.R. 317. Following the loss of property during the pendency of his chapter 11 case, the debtor received $1.4 million in insurance proceeds, including $440,000 attributable to an amount in excess of the value scheduled for this property. None of the debtor's chapter 11 operating reports disclosed receipt of these proceeds or where they went. *Id.* at 319.

The *Koss* court defined surcharge in context of a debtor who converts estate property as "recharacterizing the property converted as an advance on the amount that can be exempted." *Id.* at 323. The court observed that surcharge cases have a "common nexus: The debtors engaged in wrongful conduct that detrimentally impacted the bankruptcy estate, all while seeking the benefits and protections of the Bankruptcy Code." *Id.* at 322-23. The *Koss* debtor contended that he was entitled to his homestead exemption, and that § 522(c) precluded the trustee's action seeking surcharge of this exempt property. The bankruptcy court disagreed: "The Debtor would ascribe to Congress the intention to permit debtors who have converted nonexempt assets to exempt the rest. Not likely . . . the Debtor may not employ § 522 (c) as a shield." *Id.* at 323.

In *In re Price*, the debtors withheld from the trustee in excess of $400,000 in non-exempt assets. 384 B.R. 407, 411. In imposing its surcharge order, the bankruptcy court reasoned that surcharge for the estate's administrative fees was permitted to make up the shortfall caused by the debtors' concealment and conversion of non-exempt property. *Id.* The court allowed the trustee to set-off exempt funds that came into her possession so as to "preserve the integrity of the bankruptcy process, to make the estate whole, and to prevent the debtors from, in essence, receiving their [exemption] a second time." *Id.* at 410.

In *In re Spiers*, the bankruptcy court outlined the debtor's "rampant" bad faith conduct warranting surcharge, including: falsely attesting to prepetition sales of a vintage vehicle, a Harley motorcycle, and Panthers season tickets, claiming, in some instances, that he used the fictitious sale proceeds "to live on"; failing to disclose interests in bank accounts, business entities, guns, jewelry, and a receivable from his ex-wife that he procured post-petition and dissipated; and failing to provide the trustee with documentation needed to ascertain the existence and status of the foregoing assets and transfers. 2013 WL 319785 at *2-5. Citing *Latman* and *Malley*, the bankruptcy court surcharged the debtor's exemptions to the extent necessary to compensate the estate for $70,000 in fees and expenses incurred in combating the debtor's fraud. *Id.* at *7. The court reasoned that the debtor "must be held accountable financially to his creditors and the bankruptcy estate should be put in

[*sic*] back into the position it would have been had [the debtor] filed accurate and truthful schedules." *Id.*

Finally, in *In re Nolan*, the bankruptcy court addressed whether surcharge for the trustee's legal expenses incurred in combating the debtors' abuse was available in light of § 522(k)'s restriction on seeking administrative expenses from property a debtor exempts. 2013 WL 3153849 at *4. The court determined that § 522(k) could not be employed as a shield where "exceptional circumstances may justify charging exempt property with the cost to the estate of a debtor's wrongful post-petition conduct in order to protect the integrity of the bankruptcy process." *Id.* The court observed that "as a matter of statutory construction, expenses are not 'necessary' within the meaning of § 503(b)(1)(A) when they would not have been incurred if the debtors has cooperated with the trustee and, therefore are not prevented from being charged against exempt property by § 522(k)." *Id.* (citing *In re Swanson*, 207 B.R. 76, 81 (Bankr. D. N.J. 1997)).

As these cases demonstrate, trustees have been pursuing and bankruptcy courts utilizing surcharge orders in those exceptional circumstances where debtors engage in egregious misconduct while seeking the privileges and protections of bankruptcy. The principles of law embodied in the Code do not permit a debtor to force upon a trustee the type of abusive litigation conduct deployed by the debtor in this case, without consequence. The bankruptcy court ordered the debtor's homestead exemption forfeited in

order to partially offset the litigation costs incurred by the estate in combating the debtor's fraud on the court, the trustee, and creditors. The relief implemented was narrowly circumscribed, and necessary and appropriate to stem the debtor's abuse and preserve the integrity of the bankruptcy system.

CONCLUSION

Based on the foregoing, NABT, as *amicus curiae*, respectfully requests that the Court affirm the decision of the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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AMICUS CURIAE BRIEF

No. 12-5196

OCT 29 2013
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In The

Supreme Court of the United States

STEPHEN LAW,

Petitioner,

v.

ALFRED H. SIEGEL, CHAPTER 7 TRUSTEE,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF CHAPTER THIRTEEN TRUSTEES AS *AMICUS CURIAE* SUPPORTING RESPONDENT

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INTEREST OF THE *AMICUS CURIAE*

The National Association of Chapter Thirteen Trustees ("NACTT") is a non-profit, educational organization composed of consumer bankruptcy professionals.[1] Its membership represents a broad spectrum of participants in the consumer bankruptcy process including debtors' attorneys, creditors' representatives, and chapter 13 standing trustees. The NACTT's voting membership is composed of private trustees appointed by the U.S. Department of Justice, Executive Office of the U.S. Trustee, *see* 28 U.S.C. § 586, and in the federal judicial districts of North Carolina and Alabama by the judiciary. Approximately 98% of the chapter 13 standing trustees in the United States are voting members of the NACTT. Margaret A. Burks, a Chapter 13 Standing Trustee for the Southern District of Ohio and current president of the NACTT, and the NACTT's Board of Directors, have directly authorized Henry E. Hildebrand, III, Chapter 13 Standing Trustee for the Middle District of Tennessee, to prepare and submit this *amicus curiae* brief on the NACTT's behalf.

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[1] Pursuant to Supreme Court Rule 37.2(a), the NACTT states that all parties have consented to the filing of this brief. Pursuant to Supreme Court Rule 37.6, the NACTT states that no counsel for a party authored this brief in whole or in part and that neither counsel for a party nor any party made a monetary contribution intended to fund the preparation or submission of the brief. The NACTT is a non-profit association and has used its own resources in preparing this brief.

Historically, Congress and federal courts have observed that the more efficient and effective chapter 13 programs are those conducted by chapter 13 standing trustees who exercise a broad range of responsibilities in both the design and effectuation of chapter 13 plans. *See Matter of Maddox*, 15 F.3d 1347, 1355 (5th Cir. 1994). A chapter 13 trustee has a statutory responsibility to participate in the confirmation and administration of every chapter 13 plan. *See* 11 U.S.C. § 1302. A chapter 13 trustee, like bankruptcy trustees in general, is charged with a responsibility to the system and to maximize recoveries to creditors. The trustee is empowered to assert claims, avoid preferences, collect property of the estate, and examine and object to creditors' claims in furtherance of the congressional goal of equitably distributing property of the estate to holders of allowed claims. *Maddox*, 15 F.3d at 1355; *In re Gustav Schaeter Company*, 103 F.2d 237 (6th Cir. 1939). The trustee represents the interests of all creditors by exercising various powers to ensure that the collection of the debtor's disposable income and disbursement of that money to creditors pursuant to a confirmed plan occurs according to the dictates of Congress, as set forth in title 11 of the United States Code (the "Bankruptcy Code"). *Maddox*, 15 F.3d at 1355.

Chapter 13 has been purposefully designed by Congress in a manner to recognize, honor, and accommodate the often changing, fluid nature of individual consumer debtors' reorganizations, and chapter 13 cases are often complex and lengthy –

frequently lasting five years. As a practical matter, many such cases present issues not directly or completely resolved by the provisions of the Bankruptcy Code. It is trustees, however, much like referees in a sporting event, who provide an important and unique perspective on the issues raised not only in chapter 13 cases generally, but in this case. NACTT members experience firsthand the benefit of bankruptcy courts' powers to develop equitable solutions to complex problems and, therefore, should appropriately be involved in developing those solutions, in a manner consistent with the express provisions of the Bankruptcy Code.

SUMMARY OF THE ARGUMENT

The NACTT urges the Court to maintain the broad equitable authority of the bankruptcy court to act in furtherance of the Bankruptcy Code and in defense of the bankruptcy process in instances of a debtor's abuse of process. The recognition of a bankruptcy court's broad equitable authority accords with congressional intent. Section 105 of the Bankruptcy Code expressly articulates two overlapping sources of equitable authority, both of which empower bankruptcy courts, in appropriate, case-specific circumstances of abuse, to surcharge a debtor's exemptions to prevent or limit the consequences of such abuse. First, § 105 unambiguously authorizes the bankruptcy court to issue "any order . . . that is necessary or appropriate to carry out the provisions" of the Code.

11 U.S.C. § 105(a). This provision empowers a bankruptcy court to surcharge a debtor's otherwise exempt property in vindication of the Code provisions demanding a debtor make a full and accurate disclosure of assets and liabilities, 11 U.S.C. § 521(a)(1), and cooperate with the trustee, 11 U.S.C. § 521(a)(3), and to protect the propriety of the exemption scheme prescribed by the Code in § 522. Second, § 105 confirms the bankruptcy court's general power to "tak[e] any action or mak[e] any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a). An order surcharging a debtor's exempt property to prevent or limit damage to the estate or the bankruptcy system by a debtor's abuses of process falls squarely within this authority, and the equitable surcharge of exemptions by a bankruptcy court for volitional debtor misconduct is not in tension with the Bankruptcy Code's specification of certain limits on exemptions.

The Code's provisions curtailing exemptions are different than surcharge orders in that the former penalize proscribed actions and behavior whereas the latter compensate injured parties and effectuate the Code's distribution scheme. Because § 105 is a grant of equitable, gap-filling authority, the presence of related exemption provisions does not deprive a bankruptcy court of such authority. This point is especially compelling based on the need for equitable authority to remedy the injury arising from a debtor's abuse of the bankruptcy process. This Court recently

affirmed this principle of recognizing a bankruptcy court's authority to "take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor." *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 374-75 (2007). The bankruptcy court has authority to surcharge exemptions in extraordinary cases not because the exemptions are invalid, but because the court would otherwise be powerless to prevent an abuse of process by honoring the exemptions of a dishonorable debtor.

ARGUMENT

I. Bankruptcy courts have broad equitable authority to address extraordinary cases and situations not otherwise specifically addressed in Code provisions other than 11 U.S.C. § 105.

Bankruptcy courts indisputably have equitable powers.[2] The issue before the Court in this case concerns the scope and exercise of those powers. The

[2] This Court has repeatedly described bankruptcy courts as courts of equity. *See, e.g.*, *Young v. United States*, 535 U.S. 43, 50 (2002) ("[B]ankruptcy courts . . . are courts of equity and 'appl[y] the principles and rules of equity jurisprudence.'" (quoting *Pepper v. Litton*, 308 U.S. 295, 304 (1939)) (second alteration in original)); *see also* H.R. Rep. No. 95-595, at 359 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6315 (stating that, under the new Bankruptcy Code, "[t]he bankruptcy court will remain a court of equity").

NACTT urges the Court to reject an overly restrictive view of bankruptcy courts' equitable authority that would prevent courts from addressing case-specific[3] issues that arise in atypical cases, especially cases that involve abuses of process. Section 105 of the Bankruptcy Code recognizes two overlapping sources of equitable authority. First, it expressly provides the power to act in furtherance of the provisions of the Bankruptcy Code. Second, it confirms the authority to address noncompliance and abuses of process. An order surcharging a debtor's exemptions in an appropriate case is justifiable under either source of authority. The authority is grounded in § 105 of the Code.

A. The express grant of power to issue "any order . . . that is necessary or appropriate to carry out the provisions" of title 11 authorizes the surcharge of exemptions in extraordinary cases.

The first sentence of § 105 provides an express grant of power to bankruptcy courts to "issue any

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[3] The case-by-case nature of equitable authority supports the application of an "abuse of discretion" standard of review on appeal. *See In re Racing Servs., Inc.*, 540 F.3d 892, 901 (8th Cir. 2008) (noting that "equitable determinations . . . warrant[ ] considerable deference from a reviewing court" and that "[s]uch deference ensures that bankruptcy courts will neither feel constrained from flexibly exercising their equitable powers . . . nor fear unenlightened second-guessing by the court of appeals.").

order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).[4] Carrying out the provisions of the Code requires consideration of the Code in its entirety. Surcharge orders, in appropriate cases, support specific Code provisions and the broader distribution scheme of the Code as a whole.

The provisions of § 522 that grant exemptions are interconnected with other Code provisions, such as the debtor's duties to disclose assets and liabilities completely, 11 U.S.C. § 521(a)(1); to cooperate with the trustee, 11 U.S.C. § 521(a)(3); and to surrender to the trustee all property of the estate and any recorded information relating to property of the estate, 11 U.S.C. § 521(a)(4). These other provisions are central to the Code's proper distribution scheme and to the exemption framework within it. *See In re Marrama*, 430 F.3d 474, 478 (1st Cir. 2005) ("The [bankruptcy] statutes are designed to insure that complete, truthful, and reliable information is put forward at the

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[4] This Court recognized the importance of the bankruptcy court's appropriate use of the power granted in § 105(a) in *United States v. Energy Resources Co., Inc.*, stating that this "statutory directive[ ] [is] consistent with the traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships." 495 U.S. 545, 549 (1990). The bankruptcy court in this case did not overstep the bounds of exercising this authority because it acted for the sole purpose of maintaining the carefully designed balance between the rights of the debtor and his creditors, which Congress has made clear it intends as a primary principle of the Bankruptcy Code.

outset of the proceedings, so that decisions can be made by the parties in interest based on fact rather than fiction. . . . [T]he successful functioning of the bankruptcy act hinges both upon the bankrupt's veracity and his willingness to make a full disclosure." (internal quotation marks omitted)), *aff'd sub nom. Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007). When a debtor's efforts to manipulate the proper exemption framework under § 522 involve direct contravention of other Code provisions, a surcharge of the debtor's exemptions to vindicate those other Code provisions and the Code's intended distribution scheme serves to carry out the provisions of the Code as whole.

Justice Souter, sitting by designation, followed this approach in *Malley v. Agin*, 693 F.3d 28 (1st Cir. 2012). He recognized that the grant of exemptions in § 522 represents only an aspect of the distribution scheme under the Code. Based on the finding that the debtor had distorted the scheme by disposing of nonexempt property, the First Circuit affirmed the Bankruptcy Court's surcharge of exempt property as a permissible effort to approximate the distribution that would have occurred but for the debtor's distortion of the process. *See id.* at 30 ("[T]his line of reasoning does not enlarge the court's authority beyond 'carry[ing] out the provisions' of the code. When the concealed assets have disappeared, as the $25,000 seems to have done, surcharge is an appropriate and necessary way to vindicate § 521, requiring honest disclosure of non-exempt assets, and § 522, regulating

the determination of legitimate exemptions for the debtor's benefit.").

The case below involves the same type of remedy. The Bankruptcy Court found that the debtor had engaged in a concerted effort to "preserve Debtor's equity in his residence beyond what he was entitled to exempt as a homeowner" that represented "a fraud on his creditors and the court." *Law v. Siegel (In re Law)*, No. CC-09-1077-PaMkH, 2009 WL 7751415, at *4 (B.A.P. 9th Cir. Oct. 22, 2009). The court surcharged the exemption in an effort to limit the distortion from the debtor's manipulation of the exemption scheme. Because the court found that the direct harm to the estate from the debtor's actions exceeded the value of the exemption, the court denied the full exemption. This type of surcharge is in furtherance of provisions of the Code as a whole. *Cf. Bird v. Crown Convenience (In re NWFX, Inc.)*, 864 F.2d 588, 590 (8th Cir. 1988) ("The overriding consideration in bankruptcy . . . is that equitable principles govern. Equitable principles must be directed toward the care and preservation of the estate." (citations omitted)).

Recognizing this type of authority does not imply that bankruptcy courts have unfettered power to override congressional decisions. On the contrary, the proper exercise of this authority requires the courts to act in furtherance of Congress's legislative choices. It is precisely the fact that Congress has carefully balanced the rights of creditors and debtors in the provisions of the Bankruptcy Code that justifies

recognizing court authority to address the extraordinary cases in which a party disturbs the balance.

The grant of equitable authority to act as "necessary or appropriate to carry out the provisions" of title 11 permits courts to evaluate specific provisions in the context of the entire Code. This Court has noted that statutory construction is a "holistic endeavor." *United Sav. Ass'n of Tex. v. Timbers of Inglewood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). This guidance has particular force in the context of a grant of equitable powers to carry out the provisions of the Code. *Cf. Lend Lease v. Briggs Transp. Co. (In re Briggs Transp. Co.)*, 780 F.2d 1339, 1343 (8th Cir. 1985) ("Essential to any analysis of the meaning of and policy behind any section of the bankruptcy code is the recognition that a bankruptcy court is a court of equity. Bankruptcy courts do not read statutory words with a computer's ease, but operate under the overriding consideration that equitable principles govern the exercise of bankruptcy jurisdiction.").

The legislative history of § 105 also provides a strong indication that Congress intended to grant bankruptcy courts broad equitable power. One of the stated purposes of § 105 was to permit bankruptcy courts to "stay actions not covered by the automatic stay." H.R. Rep. No. 95-595, at 342, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6298. *Amici* in support of the Petitioner agree that "one of the most widely accepted uses of Section 105 is to enjoin actions that are not stayed by the Bankruptcy Code's automatic-stay provision, Section 362(a)." (Br. for Bankr. L. Scholars

as *Amici Curiae* Supporting Pet'r at 23.) Yet an expansion of the automatic stay beyond what the Code expressly provides is plainly not an implementation of any specific Code provision. Instead, this type of order supports a broader conception of the Code and the system the bankruptcy courts administer. Section 105 may not provide courts wide latitude to act in furtherance of perceived objectives of the Code, but Congress clearly intended to grant bankruptcy courts the power to act, on a case-by-case basis, in support of the system embodied in the specific Code provisions. *See* H.R. Rep. No. 95-595, at 342, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6298 ("The court will have to determine on a case-by-case basis whether a particular action which may be harming the estate should be stayed.").

Indeed, though some courts suggest that the exercise of § 105 power must be in support of *specific* Code provisions, *see, e.g.*, *In re Dairy Mart Convenience Stores, Inc.*, 351 F.3d 86, 92 (2d Cir. 2003), this Court has implied that bankruptcy courts may act under § 105 in furtherance of the Code's purposes. *See United States v. Energy Res. Co., Inc.*, 495 U.S. 545, 549 (1990) (citing § 105 in approving a chapter 11 plan provision "not explicitly authorize[d]" by the Code, but nonetheless consistent with the "traditional understanding" of bankruptcy court authority). Other courts have recognized this broader authority directly. *See, e.g.*, *Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003) ("[Bankruptcy] courts

are able to craft flexible remedies that, while not expressly authorized by the Code, effect the result the Code was designed to obtain."); *Morgan v. United States (In re Morgan)*, 182 F.3d 775, 779-80 (11th Cir. 1999) ("Although we conclude that § 108(c) is insufficient to toll the three-year priority period [under § 507(a)(8)(A)(i)], we find support for tolling the priority period in 11 U.S.C. § 105(a). . . . Due to congressional intent, which favors allowing the government sufficient time to collect taxes, and the fear that taxpayers may abuse the bankruptcy process in order to avoid paying taxes, we hold that the equities will generally favor the government in cases such as this.").

A proper surcharge of a debtor's exemptions carries out specific Code provisions requiring disclosure and cooperation with the trustee in § 521, so determining whether the surcharge in this case represents an abuse of discretion does not demand a conclusion that bankruptcy courts have the authority to act purely in furtherance of bankruptcy objectives. But the case law in support of that broader authority confirms the relevance of the Code's overall design in assessing the significance of specific Code provisions.

B. The equitable power to prevent abuses of process provides authority to surcharge exemptions to mitigate the actual harm caused by a debtor's abuses of process.

Section 105 also plainly recognizes bankruptcy courts' broad authority to take action to address abuses of process. It states:

> No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a). Even if, as Petitioner contends, this provision is merely a rule of construction, it provides a statutory imprimatur on the conclusion reached by numerous courts – including this Court – that bankruptcy courts have inherent authority to address abuses of process.[5] *See, e.g.*, *Marrama v.*

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[5] The Petitioner argues that this sentence refers only to the exercise of the authority specifically granted in the first sentence of § 105. This construction does not lead to a materially different assessment of bankruptcy courts' powers. Instead, it implies that Congress intended the first sentence as a broad grant of power that encompasses "action . . . to prevent an abuse of process." Regardless of whether this authority is inherent authority confirmed by the Code or equitable power specifically granted by the Code, the salient point is that bankruptcy courts have the authority to address abuses of the process.

Citizens Bank of Mass., 549 U.S. 365, 375-76 (2007) (noting "the inherent power of every federal court to sanction abusive litigation practices" that courts would have "even if § 105 had not been enacted"); *Knight v. Luedtke (In re Yorkshire, LLC)*, 540 F.3d 328, 332 (5th Cir. 2008) ("It is well-settled that a federal court, acting under its inherent authority, may impose sanctions against litigants or lawyers appearing before the court so long as the court makes a specific finding that they engaged in bad faith conduct."); *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1196 (9th Cir. 2003) ("Civil contempt authority [under § 105(a)] allows a court to remedy a violation of a specific order (including 'automatic' orders, such as the automatic stay or discharge injunction). The inherent sanction authority allows a bankruptcy court to deter and provide compensation for a broad range of improper litigation tactics.").

When a debtor's efforts to retain property beyond that available under the Code's exemption framework are sufficiently improper to constitute an abuse of process, an order surcharging the debtor's exemptions falls squarely within the authority to take "any action . . . to prevent an abuse of process." *See Malley v. Agin*, 693 F.3d 28, 30 (1st Cir. 2012) ("If § 105(a) was not meant to empower a court to issue an order like the one before us, it is hard to see what use Congress had in mind for it."). The authority to address abuses of process represents a power to "protect the integrity of the bankruptcy process." *Latman v. Burdette*, 366 F.3d 774, 786 (9th Cir. 2004). A "fundamental canon of

the Bankruptcy Code" is that "a bankruptcy court sitting in equity is duty bound to take all reasonable steps to prevent a debtor from abusing or manipulating the bankruptcy process to undermine the essential purposes of the Bankruptcy Code, including the principle that all the debtor's assets are to be gathered and deployed in a bona fide effort to satisfy valid claims." *In re Marrama*, 430 F.3d 474, 477 (1st Cir. 2005), *aff'd sub nom. Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007). "[B]ankruptcy courts have broad authority to act in a manner that will prevent injustice or unfairness in the administration of bankruptcy estates." *In re Kaiser Aluminum Corp.*, 456 F.3d 328, 340 (3d Cir. 2006); *see also Pepper v. Litton*, 308 U.S. 295, 307-08 (1939) ("[I]n the exercise of its equitable jurisdiction the bankruptcy court has the power to sift the circumstances surrounding any claim to see that injustice or unfairness is not done. . . ."); *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 235 (3d Cir. 2004) ("Bankruptcy courts are courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process." (internal quotation omitted)). The power to protect the process does not give bankruptcy courts free rein to substitute their own notions of equity for the legislative decisions embodied in the Bankruptcy Code, but it does provide bankruptcy courts the power to act to prevent or limit the harm to other parties from a debtor's abuse of the exemption framework. *See Latman*, 366 F.3d at 785 ("[T]he surcharge remedy protected the . . . creditors by preventing the [debtors] from sheltering more assets

than permitted by 11 U.S.C. § 522."); *Onubah v. Zamora (In re Onubah)*, 375 B.R. 549, 556 (B.A.P. 9th Cir. 2007) ("[T]he surcharge was calculated to compensate the estate for the actual damage inflicted by [the debtor's] misconduct.").

In this case, the lower courts clearly recognized the distinction. The Bankruptcy Appellate Panel and the Court of Appeals, in fact, reversed the Bankruptcy Court's first surcharge order because the evidence in the record was insufficient to distinguish the surcharge from a punishment of the debtor for his litigation tactics. *See Law v. Siegel (In re Law)*, No. CC-09-1077-PaMkH, 2009 WL 7751415, at *2 (B.A.P. 9th Cir. Oct. 22, 2009) (describing prior proceedings). In support of the second surcharge order, the Bankruptcy Court made detailed findings of fact regarding the debtor's abuses. *Id.* at *4. Based on the record, the appellate courts reviewing the second surcharge order agreed that "the surcharge was calculated to compensate the estate for the actual monetary costs imposed by the debtor's misconduct, and was warranted to protect the integrity of the bankruptcy process." *Law v. Siegel (In re Law)*, 435 Fed. App'x 697, 698 (9th Cir. 2011); *see also Law*, 2009 WL 7751415 at *8 ("To protect the integrity of the bankruptcy system, and to prevent Debtor from reaping a benefit from his actions to the prejudice of his creditors, the bankruptcy court was justified in deciding that Debtor not receive his homestead exemption under these facts."). The authority to prevent an abuse of process recognized in § 105 provides the authority

to craft the type of compensatory[6] remedy the Bankruptcy Court applied in this case, a surcharge on exemptions to prevent (or, in this case, to limit) the actual harm to the estate from the debtor's abuse of process.

II. Neither the Bankruptcy Code's specification of limitations on exemptions nor its provision of sanctions for certain abuses precludes the surcharge of exemptions under the Code's general equitable authority.

Bankruptcy courts' equitable powers provide an important method of filling gaps in the Code. *See Ameriquest Mortg. Co. v. Nosek (In re Nosek)*, 544 F.3d 34, 44 (1st Cir. 2008) ("[Section] 105(a) has been referred to as a 'catch-all' provision, effectively filling gaps in the bankruptcy code in order to 'preserv[e] the integrity of the bankruptcy system.'" (quoting *Cuevas-Segarra v. Contreras*, 134 F.3d 458, 459 (1st Cir.

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[6] Courts reviewing objections to exemptions have imposed similar limitations on exemptions to compensate the estate for costs incurred due to the debtor's delay in disclosing information or claiming exemptions. *See, e.g., Cecil v. Sweeney (In re Cecil)*, 63 Fed. App'x 666, 667 (4th Cir. 2003) ("[W]e conclude that the bankruptcy court acted well within its equitable powers in conditioning exemption of the award on a partial payment of the trustee's attorneys fees and costs."); *Arnold v. Gill (In re Arnold)*, 252 B.R. 778, 789 (B.A.P. 9th Cir. 2000) ("[T]he bankruptcy court could have conditioned the allowance of the amended exemptions so as to prevent any prejudice to third parties.").

1998))). Though these powers do not give a bankruptcy court authority to override clear legislative decisions in the Code, an overly restrictive approach risks denying the authority Congress recognized in § 105 to supplement the specific provisions of the Code. *Cf. Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003) ("It is in precisely this situation [when the intended system breaks down] that bankruptcy courts' equitable powers are most valuable. . . ."). The gap-filling nature of the equitable authority – especially the authority to prevent abuses of process – makes the equitable authority particularly applicable in the instances in which the Code provides an incomplete solution or addresses related but distinct issues.

Section 522 does contain provisions imposing specific limitations on exemptions, but these provisions serve different purposes than surcharges of exemptions do. Subsection (q) of § 522, for example, imposes a cap on exemptions in certain circumstances, including when the court finds that "the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title." 11 U.S.C. § 522(q)(1)(A). This provision penalizes a general abuse. An abuse in the *filing* of a case is not directly related to a debtor's claim of exemptions. Congress simply used the exemptions to impose a penalty for the abuse. A surcharge order, on the other hand, serves a compensatory

function, preventing or limiting the actual harm from abuses specifically relating to the exemption scheme.

Section 522 also provides for the reduction of a homestead exemption to the extent its value is attributable to property the debtor "disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt." 11 U.S.C. § 522(o). Again, this provision operates differently than an equitable surcharge of exemptions. With § 522(o), Congress made a policy decision that debtors should not reap the benefit of certain pre-bankruptcy conversions of non-exempt property to exempt homestead property. These conversions – though arguably offensive – were not clearly contrary to the provisions of the Code or clearly abuses of process. *See, e.g.*, *Clark v. Wilmoth (In re Wilmoth)*, 397 B.R. 915, 920 (B.A.P. 8th Cir. 2008) (noting that, although the "Eighth Circuit had already held that under some circumstances, shifting non-exempt assets into exemptions pre-bankruptcy would result in the denial of the exemption or discharge, . . . other courts had not uniformly applied the same analysis and some had allowed the exemptions almost regardless of intent"). The fact that Congress imposed this limitation on exemptions, therefore, is not an

indication that Congress intended to foreclose courts' equitable authority with respect to exemptions.[7]

Though distinguishable from equitable surcharges of exemptions, the statutory sanctions against exemptions also belie the suggestion that exemptions are sacrosanct. Subsection (o), in particular, provides a clear indication that Congress disapproves of manipulations of the exemption scheme and a demonstration that Congress does not view a reduction (or even elimination[8]) of a homestead exemption as unthinkable or incompatible with the bankruptcy system.

The Code's specification of sanctions for certain abuses also provides no basis for concluding that

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[7] This Court generally "assume[s] that Congress is aware of existing law when it passes legislation." *Hall v. United States*, 132 S. Ct. 1882, 1889 (2012) (internal quotation marks omitted). The Tenth Circuit had not decided *Scrivner v. Mashburn (In re Scrivner)*, 535 F.3d 1258 (10th Cir. 2008), at the time Congress added subsection (o), so at the time of the enactment, the only circuit-level decisions concerning the surcharge of exemptions authorized surcharges. In this environment, Congress might well have concluded that no need existed for a specific authorization for surcharges that courts had already found to be valid exercises of equitable authority.

[8] Petitioner describes subsection (o) as a cap, but in a case in which the value of the debtor's homestead that is attributable to non-exempt property the debtor fraudulently converted to homestead property equals or exceeds the exemption, the effect of subsection (o) would be to eliminate the exemption in its entirety. Petitioner does acknowledge this possibility in a footnote. (Br. of Pet'r at 30 n.9.)

courts lack authority to impose other remedies for abuses of process pursuant to their equitable authority. Though the Code provides for a denial of a chapter 7 discharge if a debtor "knowingly and fraudulently, in or in connection with the case . . . made a false oath or account," 11 U.S.C. § 727(a)(4), this sanction represents a penalty for misbehavior and in no way indicates a circumscription of the bankruptcy court's equitable authority to prevent or limit the harm of the misbehavior to other parties, as authorized under § 105. If this were not so, then the similar provision for denial of discharge for a debtor's refusal "to obey any lawful order of the court, other than an order to respond to a material question or to testify," 11 U.S.C. § 727(a)(6)(A), would preclude a court from taking other actions to enforce its lawful orders, such as imposing civil sanctions. Plainly, federal courts are not impotent in the face of outright defiance of their lawful orders. *See, e.g.*, *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) ("Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose . . . submission to their lawful mandates." (internal quotation marks omitted)); *Caldwell v. Rainbow Magazine, Inc. (In re Rainbow Magazine, Inc.)*, 77 F.3d 278, 284 (9th Cir. 1996) ("By providing that bankruptcy courts could issue orders necessary 'to prevent an abuse of process,' Congress impliedly recognized that bankruptcy courts have the inherent power to sanction that *Chambers* recognized exists within Article III courts."). The Court, in fact, has specifically held that "a federal court [is not] forbidden to sanction

bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under the statute or the Rules." *Chambers*, 501 U.S. at 50.

The canon of statutory interpretation that "the specific governs over the general" does not demand a different result. The argument that the existence of specific statutory provisions in a category as amorphous as abuse prevention precludes courts' exercise of general equitable authority to address other unspecified abuses conceives of the "specific" far too broadly. The application of the general/specific cannon in this manner would eviscerate the grant of power § 105 contains. Section 105 recognizes equitable authority to supplement the specific provisions of the Code. In this context, Congress clearly did not intend to foreclose the application of the "general" rule in every broad area that the Code contains "specific" provisions. *Cf. RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2072 (2012) ("[T]he general/specific canon is not an absolute rule, but is merely a strong indication of statutory meaning that can be overcome by textual indications that point in the other direction."); *Varity Corp. v. Howe*, 516 U.S. 489, 511 (1996) ("To apply a canon properly one must understand its rationale. This Court has understood the present canon ('the specific governs the general') as a warning against applying a general

provision when doing so would undermine limitations created by a more specific provision.").[9]

The power to address abuses of process is particularly important, and the need for broad equitable authority is greatest in cases involving abuses of process. This Court recently affirmed this principle in the case of *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007). Despite statutory language and legislative history suggesting that individual chapter 7 debtors have an unqualified right to a first-time conversion of their cases to chapter 13, the Court concluded that neither the statutory text nor the legislative history "limits the authority of the court to take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor." *Id.* at 374-75. The Court's holding in *Marrama* recognizes that bankruptcy courts' equitable authority to prevent abuses of process is a broad power that overlays the entire Code. Even

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[9] In the *Varity* case, the Court gave effect to a "general" provision, recognizing it as a "catchall" that "act[s] as a safety net, offering appropriate equitable relief for injuries caused by violations that [the statute] does not elsewhere adequately remedy." *Varity Corp. v. Howe*, 516 U.S. 489, 512 (1996). The relationship between § 105 and other provisions of the Bankruptcy Code is akin to the "catchall" the Court described in *Varity*. Though the Code contains specific provisions addressing certain issues and providing certain remedies at a legislative level, § 105 indicates that Congress also intended bankruptcy courts to have the authority to address case-by-case issues not specifically governed by other Code provisions.

when the Code provides direction for typical cases of "honest but unfortunate" debtors, bankruptcy courts retain power to act to prevent abuses of process in the atypical cases.

The NACTT urges the Court to confirm that bankruptcy courts have broad powers to fashion case-specific remedies consistent with the Bankruptcy Code in extraordinary cases. The bankruptcy courts' broad equitable authority is particularly important in the chapter 13 cases the NACTT's member trustees administer. For example, courts have applied the powers of § 105 to address abusive repeat filings. *See, e.g.*, *Cusano v. Klein (In re Cusano)*, 431 B.R. 726, 737 (B.A.P. 6th Cir. 2010) (affirming a two-year bar on re-filing under § 105 and citing cases); *In re Gonzalez-Ruiz*, 341 B.R. 371, 384 (B.A.P. 1st Cir. 2006) (affirming a grant of prospective "*in rem*" stay relief, applicable to specific property in future bankruptcy cases). Courts have cited § 105 for purposes as varied as imposing a deadline for a debtor to file a state income tax return, as required by a local rule, *see Howard v. Lexington Invs., Inc.*, 284 F.3d 320, 323 (1st Cir. 2002), and appointing an elderly and incompetent debtor's wife as his next friend "in order to aid in the administration of th[e] case," *see In re Myers*, 350 B.R. 760, 764 (Bankr. N.D. Ohio 2006). Though apparently not the subject of any reported cases, bankruptcy courts also frequently fashion equitable remedies to deal with delinquencies in chapter 13 cases short of dismissing or converting the cases, such as placing the cases on "probation," subject to

dismissal without further hearing upon notice of subsequent default. Chapter 13 cases are complex and routinely extend over five-year periods. Matters not directly addressed by the Code are virtually inevitable. Section 105 demonstrates that Congress intended bankruptcy courts to have equitable authority to handle some of these matters. The NACTT urges the Court to affirm that authority and avoid unnecessary harm to the bankruptcy system.

CONCLUSION

For the foregoing reasons, the NACTT requests that the Court affirm the decision of the Court of Appeals.

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AMICUS CURIAE BRIEF

No. 12-5196

IN THE

Supreme Court of the United States

STEPHEN LAW,

Petitioner,

v.

ALFRED H. SIEGEL, CHAPTER 7 TRUSTEE,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF THE NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE

The National Association of Consumer Bankruptcy Attorneys, or NACBA, is a non-profit organization of more than 3,500 consumer bankruptcy attorneys practicing throughout the country. Incorporated in 1992, NACBA is the only nationwide association of attorneys organized specifically to protect the rights of consumer bankruptcy debtors. NACBA member attorneys and their law firms represent debtors in an estimated 600,000 bankruptcy cases each year.

Among other things, NACBA works to educate the bankruptcy bar and the community at large on the uses and misuses of the consumer bankruptcy process. NACBA also advocates for consumer debtors on issues that cannot be addressed adequately by individual member attorneys. NACBA has filed amicus briefs in this Court in several cases involving the rights of consumer debtors. *See, e.g.*, *Ransom* v. *FIA Card Servs., N.A.*, 131 S. Ct. 716 (2011); *Hamilton* v. *Lanning*, 130 S. Ct. 2464 (2010).

The resolution of the question presented in this case is of substantial importance to NACBA. Many thousands of debtors represented by NACBA and its members depend on exempt property to achieve a "fresh start" after declaring bankruptcy. Furthermore, the scope of a bankruptcy court's equitable authority to implement the Bankruptcy Code is an issue that potentially affects every bankruptcy case in which NACBA or a member participates.[1]

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[1] No counsel for a party authored this brief in whole or in part, and no person or entity other than NACBA, its members, and its counsel made any monetary contribution toward the preparation or submission of this brief. Letters of consent from both parties accompany the brief.

SUMMARY OF ARGUMENT

I. One of the core purposes of a chapter 7 bankruptcy case is to provide individual debtors with a fresh start. Consistent with that longstanding principle, federal bankruptcy statutes have for centuries permitted debtors to exempt from distribution to creditors certain property viewed as necessary to a fresh start—including equity in a principal residence. And in Section 522 of the Bankruptcy Code, Congress has expressly prohibited the use of exempt property to pay unsecured pre-petition debts or administrative expenses incurred during a bankruptcy case (with certain exceptions not relevant here). Moreover, Congress specifically considered the question of when debtor misconduct can justify forfeiture of otherwise exempt property, and it set out those narrow circumstances with precision. The bankruptcy court here contravened Congress's judgment when, despite the absence of those narrow circumstances, it imposed a "surcharge" that denied petitioner the $75,000 homestead exemption to which he was entitled in order to pay legal fees incurred by the trustee.

Such a surcharge cannot be justified by invoking Section 105(a) of the Code. That section, which effectively codifies the court's inherent authority, provides that "the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Section 105 does not allow a court to override the Bankruptcy Code in order to achieve what the court views as a just result in a particular case. Rather, it empowers bankruptcy courts to effectuate the Code's substantive provisions. While Section 105 may be a useful tool to that end, it is not a license to disregard, under the cloak of equity, the express judgments Congress has made.

II. Congress has also provided specific remedies for debtor misconduct in a chapter 7 case, principally the de-

nial or revocation of a discharge of indebtedness. Bankruptcy courts may also impose litigation sanctions or invoke traditional civil-contempt powers. Given that Congress expressly empowered bankruptcy courts to impose specific, and fully adequate, sanctions for debtor misconduct, Section 105(a) cannot be read to authorize the creation of a new, draconian sanction that is inconsistent with the Bankruptcy Code's express provisions.

III. Although the Code's plain language should lead this Court to hold that bankruptcy courts may not direct that exempt property be used to pay unsecured creditors, if the Court concludes otherwise then it should make clear that the power to do so is narrowly cabined. Consistent with traditional principles of equity, a court should have the power to "surcharge" the debtor's exempt property—again, if at all—only if it expressly finds that (1) the debtor has engaged in misconduct that actually injured one or more creditors by depriving them of estate assets to which they were entitled; (2) the misconduct involved an intentional effort to conceal or dissipate estate assets so as to keep them from creditors; (3) the surcharge is no greater than necessary to remedy the harm to creditors caused by the misconduct (i.e., is remedial rather than punitive); and (4) no other available remedy is adequate.

ARGUMENT

I. THE BANKRUPTCY CODE DOES NOT PERMIT SURCHARGING A DEBTOR'S EXEMPT PROPERTY TO PAY UNSECURED PRE-PETITION DEBTS OR ADMINISTRATIVE EXPENSES

NACBA certainly does not condone petitioner's lamentable conduct in this case. But that conduct should not lead the Court to embrace a rule that violates the express language of the Bankruptcy Code—and that would be prone to misuse in future cases. Contrary to the Ninth Circuit's reasoning below, a bankruptcy court may not

"surcharge" a debtor's exempt property to pay unsecured pre-petition debt or administrative expenses, such as fees incurred by the trustee or the trustee's counsel. The simple reason is that Congress has expressly forbidden it, in Section 522 of the Bankruptcy Code. A bankruptcy court's general power "to carry out" the provisions of the Code, 11 U.S.C. § 105(a), cannot be used in derogation of this explicit prohibition.[2]

A. Section 522 Prohibits Using Exempt Property To Pay Unsecured Pre-Petition Debts Or Administrative Expenses

1. This case involves petitioner's bankruptcy under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 *et seq.* In a typical chapter 7 case, the debtor's assets are liquidated and used to pay creditors' claims.

If *all* of a chapter 7 debtor's property were liquidated, however, he or she would be left penniless. To avoid this, the Bankruptcy Code "allows the debtor to prevent the distribution of certain property by claiming it as exempt." *Taylor* v. *Freeland & Kronz*, 503 U.S. 638, 642 (1992).

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[2] The term "surcharge" is not defined in the Code. In practice, the term commonly refers to a trustee's request, under 11 U.S.C. § 506(c), to use a secured creditor's collateral to pay administrative expenses that are incurred to preserve or dispose of the collateral. *See, e.g., In re Hen House Interstate, Inc.*, 177 F.3d 719, 722 (8th Cir. 1999) (en banc) (Section 506(c) allows a trustee "to surcharge property securing the claim of an allowed secured creditor"), *aff'd sub nom. Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N.A.*, 530 U.S. 1, 5 (2000) (noting that Section 506(c) is exceptional because claims for administrative expenses are otherwise subordinate to secured claims). Presumably, the term "surcharge" has come to be used in the circumstances here because the trustee similarly seeks payment of administrative expenses from property not otherwise available to pay them—except that here the trustee does so in the face of, rather than in reliance on, express statutory authority.

For instance, the Code permits an individual debtor to exempt a certain amount of equity in his or her house or vehicle, or in tools of the debtor's trade. *See* 11 U.S.C. § 522(d). With narrow exceptions, property that is properly exempted cannot be used to satisfy the debtor's unsecured pre-petition debts. *See id.* § 522(c). Nor can it be used to pay administrative claims incurred by the estate. *Id.* § 522(k).

The concept that certain property is exempt from the claims of unsecured creditors is both fundamental and venerable. It is not unique to bankruptcy; every State has laws exempting certain property from unsecured creditors' reach, so that a creditor executing a judgment cannot render a debtor wholly destitute. *See, e.g.*, Hynes et al., *The Political Economy of Property Exemption Laws*, 47 J.L. & Econ. 19, 19 (2004). And such laws have existed since well before the Founding. Traditional English law, emulated in many of the colonies, exempted real property from being sold to satisfy unsecured creditors' claims. *See* Priest, *Creating an American Property Law: Alienability and Its Limits in American History*, 120 Harv. L. Rev. 385, 401, 409 (2006). Although England adopted the Debt Recovery Act in 1732, and thereby made all colonial assets available to satisfy debts, *id.* at 423-424, at the time of the Founding many States reimposed restrictions on creditors' ability to execute on real property, *id.* at 447. And during the first half of the nineteenth century, state laws exempting both real and personal property increased in number and protectiveness. *Id.* at 455-456.

The federal bankruptcy laws have likewise provided for exemptions of certain property "for more than two centuries." *Schwab* v. *Reilly*, 130 S. Ct. 2652, 2664 (2010). *See generally Bankruptcy Exemptions: Critique and Suggestions*, 68 Yale L.J. 1459, 1465 (1959). Today, as in those days, exemptions are "designed to permit individual

debtors to ... enjoy a 'fresh start' after bankruptcy." *United States* v. *Security Indus. Bank*, 459 U.S. 70, 72 n.1 (1982). Congress has "[r]ecogniz[ed] that exemptions are critical to" achieving that goal. *In re Kolich*, 328 F.3d 406, 408 (8th Cir. 2003); *accord In re Pelter*, 64 B.R. 492, 497 (Bankr. W.D. Okla. 1986) ("'Congress recognized that exemptions, whether state or federal in origin, are an essential feature of the system of financial rehabilitation afforded ... in bankruptcy proceedings.'" (quoting *In re McManus*, 681 F.2d 353, 358 (5th Cir. 1982) (Dyer, J., dissenting))).

Section 522 of the Bankruptcy Code, which governs exemptions, allows debtors to select either the federal exemptions set out in the Code or the exemptions defined by applicable state law—unless the relevant State has "'opt[ed] out' of the federal list," thereby limiting the debtor to the exemptions specified under state law. *Owen* v. *Owen*, 500 U.S. 305, 308 (1991); *see also* 11 U.S.C. § 522(b)(1) (providing the choice). Both federal law and the law of most States (including California, the residence of the debtor here) provide an exemption for a certain amount of equity in the debtor's principle residence (often called the "homestead exemption"), which is the exemption at issue here. *See* 11 U.S.C. § 522(d)(1); Cal. Civ. Proc. Code § 704.710(c) (definition of homestead exemption); *id.* § 704.730 (amount of exemption).

In short, for centuries exemptions have been a major part of the overall scheme for rehabilitating individual debtors. And as the current Bankruptcy Code reflects, Congress has specifically considered and resolved a variety of issues relating to exemptions, including the nature and scope of permissible exemptions, the States' role in defining them, the procedures for claiming and objecting to exemptions, and—critically—the narrow circumstances under which exempt property may be used to pay a debtor's unsecured pre-petition or post-petition debts. The

Code contains detailed and reticulated provisions governing all of these points. Congress has thus already made "the difficult choices" regarding exemptions, balancing the "economic harm that exemptions visit on creditors" with the need to provide the debtor some means for a fresh start. *Schwab*, 130 S. Ct. at 2667.

2. There is no dispute that the debtor here was eligible, under California law, for a homestead exemption of $75,000. *See, e.g.*, Resp. to Pet. for Cert. 1, 4. He included this exemption in his initial claim of exemptions. *See* Pet. Br. Supp. App. 8a. And because neither the trustee nor any other party objected to the claimed homestead exemption, "the property claimed ... [wa]s exempt." 11 U.S.C. § 522(*l*).

The debtor's $75,000 interest in his homestead, once exempted, could not be used to pay either unsecured prepetition debts or administrative expenses, except in circumstances not present here. That is the clear command of Section 522 of the Bankruptcy Code. That section provides that property exempted thereunder "*is not liable* during or after the case for any debt of the debtor that arose ... before the commencement of the case," with the exception of debts validly secured by the property at issue and three other narrow categories of debt. 11 U.S.C. § 522(c) (emphasis added).[3] It likewise provides that exempt property "*is not liable* for the payment of any administrative expense," with two exceptions that are inapplicable here. *Id.* § 522(k) (emphasis added).[4]

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[3] The other three exceptions are for certain nondischargeable debts, *see* 11 U.S.C. § 522(c)(1), (3), and debts in connection with fraud relating to certain educational expenses, *see id.* § 522(c)(4).

[4] The two exceptions allow exempt property to be used to pay administrative expenses that the trustee or the debtor incurs in recovering that property from a third party. The first exception

The fees incurred here by the trustee were "administrative expenses" within the meaning of Section 522(k). They consisted entirely of the trustee's legal fees. *See In re Law*, 401 B.R. 447, 453-454 (Bankr. C.D. Cal. 2009). And the Bankruptcy Code categorizes such fees as administrative expenses: Section 503(b) defines allowable administrative expenses to include the "actual, necessary costs and expenses of preserving the estate," as well as "compensation and reimbursement awarded under section 330(a) of this title." 11 U.S.C. § 503(b)(1), (2). Section 330(a), in turn, authorizes "reasonable compensation for actual, necessary services rendered by a trustee ... or attorney." *Id.* § 330(a)(1)(A). Because the trustee's fees were administrative expenses, Section 522(k) prohibits using the debtor's exempt property to pay them.

Notably, in Section 522(k), Congress considered the circumstances under which exempt property *could* be "surcharged" to pay administrative expenses, and it specified two exceptions to the general rule—both of which permit "surcharging" exempt property to recoup the costs of reclaiming that property for the debtor. *See supra* n.4 (discussing the exceptions). As this Court has explained, "[w]here Congress enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary

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concerns exempt property that the trustee has recovered from third parties under the trustee's avoidance powers. *See* 11 U.S.C. § 522(k)(1), (g). The second exception concerns exempt property that the *debtor* has recovered from third parties under powers set out elsewhere in section 522. *See id.* § 522(k)(2). In both cases, the exempt property may be used to pay administrative expenses incurred in the process of avoiding the property's transfer and recovering it for the debtor. *See generally* 4 *Collier on Bankruptcy* ¶¶ 522.11-522.12 (Resnick & Sommer eds., 16th ed. 2013). Respondent has never asserted that either exception applies here.

legislative intent." *Andus* v. *Glover Constr. Co.*, 446 U.S. 608, 616-617 (1980); *accord United States* v. *Smith*, 499 U.S. 160, 166-167 (1991) (court of appeals erred in "inferring a third exception" after "Congress' express creation of ... two"). Thus, "[b]ecause the Code contains explicit exceptions to the general rule placing exempt property beyond the reach of the estate, [courts] may not read additional exceptions into the statute." *In re Scrivner*, 535 F.3d 1258, 1264 (10th Cir. 2008).

Congress has also considered when debtor misconduct—including fraud—can be a permissible ground for using exempt property to pay debts, and it has enumerated the narrow circumstances in which such a sanction is justified. Section 522(c) provides several exceptions to the general rule that exempt property may not be used to pay unsecured pre-petition debt, including exceptions for certain specific types of fraud. For instance, exempt property may be used to pay a debt for "a tax ... with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax." 11 U.S.C. § 523(a)(1)(C); *see also id.* § 522(c)(1) (exception for "debt of a kind specified in paragraph (1) ... of section 523(a)"). Exempt property may also be used to pay "a debt in connection with fraud in the obtaining or providing of any scholarship ... at an institution of higher education." *Id.* § 522(c)(4).

Moreover, Section 522 contains two provisions specifically addressing the impact of debtor misconduct on a state-law homestead exemption, the exemption at issue here. *See* 11 U.S.C. § 522(*o*) (reducing the value of such an exemption "to the extent that such value is attributable to" the debtor's pre-petition transfer of non-exempt property "with the intent to hinder, delay, or defraud a creditor"); *id.* § 522(q)(1)(B)(ii) (allowing such an exemption to be capped at $155,675 if a debtor owes pre-petition debts attributable to, among other things, "fraud, deceit, or ma-

nipulation ... in connection with the purchase or sale of any security," or misconduct causing serious physical injury or death within the preceding five years).

Congress has thus made clear precisely what sorts of fraudulent conduct justify an exception to the general rule exempting certain property from creditors' claims. The Bankruptcy Code does not permit courts to invent other exceptions that Congress did not see fit to include. Indeed, it would be anomalous, to say the least, if the Code expressly permitted a state-law homestead exemption to be capped at $155,675 when the debtor has debts attributable to a crime or intentional tort resulting in death, but implicitly allowed the same exemption to be wiped out altogether when the debtor has caused the bankruptcy trustee to incur legal fees.

B. Section 105(a) Cannot Override The Express Limitations In Section 522

1. Under Section 105 of the Code, a bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Courts that have permitted surcharges of exempt property to pay administrative expenses (or pre-petition debts) that fall outside the specific exceptions Congress crafted have often relied on this language. *See, e.g.*, *Malley* v. *Agin*, 693 F.3d 28, 30 (1st Cir. 2012); *Latman* v. *Burdette*, 366 F.3d 774, 785 & n.8 (9th Cir. 2004). That reliance is misplaced.

By its terms, Section 105(a) confers power "to carry out" the provisions of Bankruptcy Code, not to override or contradict them. Section 105(a) "preserves the equity powers of a bankruptcy court." *In re Palmer*, 219 F.3d 580, 582 n.2 (6th Cir. 2000); *see also Celotex Corp.* v. *Edwards*, 514 U.S. 300, 303 (1995) (referring to "the Bankruptcy Court exercis[ing] its equitable powers under 11 U.S.C. § 105(a)"). But "[t]he [equity] chancellor never did,

and does not now, exercise unrestricted power to contradict statutory or common law when he feels a fairer result may be obtained by application of a different rule." *United States* v. *Noland*, 517 U.S. 535, 543 (1996) (second alteration in original) (internal quotation marks omitted). Thus, the equitable powers that Section 105(a) preserves "can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington* v. *Ahlers*, 485 U.S. 197, 206 (1988); *see also SEC* v. *U.S. Realty & Improvement Co.*, 310 U.S. 434, 455 (1940) ("A bankruptcy court is ... guided by equitable doctrines and principles *except in so far as they are inconsistent* with the Act." (emphasis added)); *Young* v. *Higbee Co.*, 324 U.S. 204, 214 (1945) ("Courts of bankruptcy ... exercise all equitable powers unless prohibited by the Bankruptcy Act."); *cf. Magniac* v. *Thomson*, 56 U.S. 281, 299 (1853) ("Wherever the rights or the situation of parties are clearly defined and established by law, equity has no power to change or unsettle those rights[.]"). Because Section 522(k) prohibits the use of exempt property to pay administrative expenses except in specific circumstances not present here, Section 105(a) cannot authorize such a use.

This conclusion is mandated by the text of Section 105(a), which limits the authority it grants to actions necessary or appropriate "to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a). And it is reinforced by basic canons of statutory interpretation, under which when "a general permission ... is contradicted by a specific prohibition ..., the specific provision is construed as an exception to the general one." *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012). Accordingly, even if Section 105 were construed as a catch-all "general permission" to do equity, it would be circumscribed by the "specific prohibition" in Section

522(k) on using exempt property to pay administrative expenses.[5]

2. Surcharging exempt property to pay administrative expenses not only gainsays the Code's text, but also derogates the policies reflected in Section 522. The principal purpose of exemptions is to enable the debtor "to enjoy a 'fresh start' after bankruptcy." *Security Indus. Bank*, 459 U.S. at 72 n.1. That purpose is vitiated when the debtor's means for a fresh start are taken away.

Nor does the fresh-start policy become irrelevant when a debtor commits misconduct. Exemptions do not exist solely to protect the debtor, but also to protect his or her dependents, as well as society at large—a purpose reflected in Congress's decision not to permit a debtor to waive his or her exemptions. *See* 11 U.S.C. § 522(e).

In drafting Section 522, Congress had debtors' dependents firmly in mind, and it made clear that a *debtor*'s

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[5] The First Circuit has also justified a surcharge of exempt property based on what it described as the "spaciousness" of the second sentence of Section 105(a), which states that:

> No provisions of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a), *cited in Malley*, 693 F.3d at 30. While this sentence is not implicated here because the bankruptcy court did not act *sua sponte*, the sentence simply makes clear that any references in the Code to the raising of an issue *by a party* should not be construed to prevent the bankruptcy court from acting on its own initiative. That sentence does not otherwise expand courts' power beyond that provided in the preceding sentence. Indeed, it would be quite odd for the second sentence to give courts the ability to do more on their own initiative than they could, under the first sentence, at the behest of a party.

failure to claim an exemption properly could not by itself take the benefit of that exemption from his or her dependents. Section 522(*l*) thus allows a dependent to submit a list of exempt property if the debtor fails to do so. Likewise, Section 522(q) provides that subsection (q)(1)'s limitations on a debtor's state-law homestead exemption—which may be imposed for certain misconduct, *see supra* pp. 9-10—"shall not apply" to any homestead amount "reasonably necessary for the support of the debtor and any dependent of the debtor." 11 U.S.C. § 522(q)(2); *see also In re Hayes*, 119 B.R. 86, 88 (Bankr. E.D. Va. 1990) (refusing to surcharge exempt property after recognizing that a state homestead exemption protects "debtors *and their families*" (emphasis added)); *Pomeroy* v. *Beach*, 49 N.E. 370, 372 (Ind. 1898) (exemptions are "based upon considerations of public policy and humanity; and it was not alone for the benefit of the debtor, but for his family also, that such laws were enacted"). Forcing a debtor's dependents to endure the hardship of losing exemptions because of the debtor's conduct in circumstances outside the narrow bounds set by the Code would contravene Congress's aim.

Exemptions also benefit the public at large, by helping a debtor avoid public assistance. *See, e.g., Norwest Bank Neb., N.A.* v. *Tveten*, 848 F.2d 871, 876 (8th Cir. 1988) (homestead exemptions "reliev[e] society from the burden of supplying subsidized housing"). That purpose, too, is frustrated by construing Section 105 to grant courts a free-floating power to surcharge exemptions in situations not enumerated by Congress.

Finally, the Bankruptcy Code's exemption provisions are carefully structured to protect the States' prerogative to define and regulate exempt property. Section 522 permits debtors to choose whether to invoke the federal exemptions or the exemptions provided under the law of their State. 11 U.S.C. § 522(b)(1). But it allows States to

"opt out" of the federal exemptions by limiting debtors to the exemptions available under state law. *Id.* § 522(b)(2); *see also supra* p. 6. A majority of States, including California, have done so. *See* 4 *Collier on Bankruptcy* ¶ 522.01, at 522-14 n.2 (Resnick & Sommer eds., 16th ed. 2013). A bankruptcy court that permits creditors to claim against property that a State has seen fit to let debtors exempt defeats Congress's intent to leave the power to define exempt property—and thus ensure minimum protections for their debtor citizens—largely to the States. As this Court has previously recognized, absent a "clear and manifest" congressional intent, the Bankruptcy Code should not be construed to displace state law relating to such an essential state interest. *BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 544 (1994). There is no justification for a reading of Section 105 that would have precisely such an effect.

II. An Expansive Reading Of Section 105(a) Is Unnecessary Because Courts Possess Other Tools To Prevent And Remedy Abuses Of The Bankruptcy Process

As explained above, reading Section 105(a) to allow the surcharge here is inconsistent with the text of both Section 105 and Section 522, as well as with the purposes behind bankruptcy exemptions. Such a reading is also unnecessary, because there are ample alternative ways for a bankruptcy court to address debtor misconduct. For instance, the Bankruptcy Code contemplates that such misconduct may result in the denial or revocation of discharge, a sanction that deprives the debtor of any benefit that might otherwise accrue from a bankruptcy proceeding. Bankruptcy courts may also impose traditional litigation sanctions, including assessing attorney's fees against a debtor or invoking the civil contempt power. In light of these alternatives, there is no need for additional extra-statutory remedies, such as surcharging exempt property.

Moreover, these remedies demonstrate that—as discussed above—Congress has already considered the issue of debtor misconduct, and created the sanctions that it deemed warranted.

1. Under Section 727 of the Code, courts are authorized to deny a debtor who has engaged in misconduct any discharge of debts, or to revoke a discharge previously granted. Section 727(a) provides that a bankruptcy court should deny a discharge if, among other things, a debtor conceals assets, makes false statements or attempts to induce others to do so, or fails to obey court orders. *See* 11 U.S.C. § 727(a)(2), (4), (6). Similarly, Section 727(d) requires a court, on the request of a party in interest, to revoke a discharge that was "obtained through the fraud of the debtor, [if] the requesting party did not know of such fraud until after the granting of such discharge." *Id.* § 727(d)(1). In fact, the bankruptcy court in this very case denied the debtor a discharge under the provision of Section 727 forbidding a discharge when a debtor "knowingly and fraudulently, in or connection with the case[,] ... made a false oath or account." *Id.* § 727(a)(4)(A).

Denial or revocation of discharge is a potent deterrent to debtor misconduct, because a debtor who is denied a discharge (or has it revoked later) gains none of the benefits of bankruptcy—and in particular remains fully liable for all pre-petition debt. At the same time, creditors obtain the benefit of having a trustee marshal and distribute the estate's property on account of their pre-bankruptcy claims, while at the same time retaining their state-law right to collect any deficiency from the debtor's post-petition property. In addition to being a deterrent, denial or revocation of discharge is an appropriate remedy for any abuse that does occur, as it ensures that the debtor does not profit from his or her misconduct. Moreover, debtors cannot circumvent a denial of discharge by filing a second bankruptcy petition and obtaining a discharge in

that case: Under Section 523 of the Code, debt as to which the debtor "was denied a discharge" in an earlier case is non-dischargeable in any subsequent bankruptcy case. 11 U.S.C. § 523(a)(10).

2. Bankruptcy courts can also employ traditional judicial tools to address debtor misconduct. For example, Rule 9011 of the Federal Rules of Bankruptcy Procedure authorizes sanctions for filing a pleading that is deficient in any of several enumerated respects. This rule does not, of course, cover the landscape of possible misconduct, but that does not mean that other misbehavior is immune to sanctions. While the assets of the bankruptcy estate can be disposed of only in conformance with the Code's provisions, a court may impose *in personam* liability on a debtor for litigation-related misconduct. *See Marrama* v. *Citizens Bank of Mass.*, 549 U.S. 365, 375-376 (2007) (bankruptcy courts possess "the inherent power of every federal court to sanction abusive litigation practices" (internal quotation marks omitted)). A bankruptcy court could, for instance, hold a contumacious debtor in civil contempt, and require the debtor to pay the costs associated with his or her disregard of court orders. Likewise, a court could order a debtor to pay fees incurred by a trustee in ferreting out the debtor's misconduct. Because such sanctions would be imposed post-petition, they could not be discharged, and thus any of the debtor's non-exempt post-petition assets or income could be used to satisfy them.

III. Alternatively, Any Power To Surcharge Exempt Property Under Section 105(a) Must Be Narrowly Circumscribed

For the foregoing reasons, the Court should hold that Section 105(a) does not permit surcharges of exempt property like the one imposed here. If, however, the Court concludes that such an extra-statutory surcharge *is* permissible in certain circumstances, then it is critical

that the Court establish clear limits on what those circumstances are.

More specifically, the Court should make clear—consistent with longstanding principles governing courts' resort to inherent or equitable authority to impose sanctions—that a surcharge is impermissible unless the bankruptcy court finds that: (1) the debtor has engaged in serious misconduct that actually injured one or more creditors by depriving them of value from the estate to which they were entitled; (2) the misconduct involved an intentional effort to conceal or dissipate estate assets so as to keep them from creditors; (3) the surcharge is no greater than necessary to remedy the harm caused by the misconduct (i.e., is remedial rather than punitive); and (4) no other available remedy is adequate.

Actual injury. A court should not be permitted to surcharge exempt property unless the debtor's conduct has prevented one or more creditors from receiving estate assets to which they were entitled. Absent actual injury, there is no sound basis to deny a debtor the exemptions that Congress or a State has deemed appropriate. This Court has imposed a similar limitation in other contexts, both inside and outside bankruptcy. *See Comstock* v. *Group of Institutional Investors*, 335 U.S. 211, 229 (1948) (holding in a bankruptcy case that a previously enunciated equitable rule applies only where the wrongdoer "advantage[s] itself *at the injury of the subsidiary*" (emphasis added)); *CIGNA Corp.* v. *Amara*, 131 S. Ct. 1866, 1881 (2011) ("[J]ust as a court of equity would not surcharge a trustee for a nonexistent harm, a fiduciary can be surcharged under § 502(a)(3) [of ERISA] only upon a showing of actual harm." (citation omitted)).

Misconduct concerning concealment or dissipation of estate assets. A surcharge should be permitted (again, if at all) only when a debtor has intentionally concealed or dissipated estate assets (or attempted to do so) in a

fraudulent effort to shelter them from creditors. This requirement ensures that courts would not second-guess the "difficult choices" Congress has made regarding what exemptions are appropriate, *Schwab*, 130 S. Ct. at 2667, based on conduct that is anything less than intentional fraud.

Surcharge no greater than necessary to remedy the harm to creditors. No surcharge of exempt property should exceed the amount required to undo the harm caused by the debtor's conduct, i.e., to restore to the creditors whatever value the court finds the debtor's misconduct took away. Greater surcharges would serve only to punish the debtor, which is improper because "relief in equity is remedial, not penal." *Hartford-Empire Co.* v. *United States*, 323 U.S. 386, 435 (1945), *amended by* 324 U.S. 570 (1945); *see also Tull* v. *United States*, 481 U.S. 412, 422 (1987) ("Remedies intended to punish culpable individuals, as opposed to those intended simply to extract compensation or restore the status quo, were issued by courts of law, not courts of equity."). To the extent a court deems it necessary to punish a debtor, there are other tools available, such as those discussed above.

Harm that cannot be adequately addressed with other means. Finally, a surcharge should not be permitted unless the court finds that no other available alternative would suffice to remedy the debtor's misconduct. Like the other limitations proposed above, this prerequisite helps take account of the points made in Part I regarding both the critical importance of exemptions and the (at a bare minimum) severe tension between surcharges like the one here and the language of the Code. Assuming those points do not lead the Court to prohibit such surcharges entirely—as they should—they at the very least counsel in favor of limiting this extra-statutory remedy to circumstances in which it is strictly necessary to prevent a manifest injustice.

CONCLUSION

The judgment of the court of appeals should be reversed. Alternatively, the judgment should be vacated and the case remanded for the bankruptcy court to consider the factors discussed in Part III.

Respectfully submitted.

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